Decision 2003-098

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ATCO Electric Ltd. ATCO Gas North and ATCO Gas South, Both Operating Divisions of ATCO Gas and Pipelines Ltd.

Transfer of Certain Retail Assets to Direct Energy Marketing Limited and Proposed Arrangements with Direct Energy Regulated Services to Perform Certain Regulated Retail Functions

December 4, 2003

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Alberta Energy and Utilities Board

Decision 2003-098

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ALBERTA ENERGY AND UTILITIES BOARD
Decision 2003-098: ATCO Electric Ltd., ATCO Gas North and ATCO Gas South,
Both Operating Divisions of ATCO Gas and Pipelines Ltd.
Transfer of Certain Retail Assets to Direct Energy Marketing Limited and Proposed Arrangements with Direct Energy Regulated Services to Perform Certain Regulated Retail Functions
Application No. 1299855

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ALBERTA ENERGY AND UTILITIES BOARD
Calgary Alberta

ATCO ELECTRIC LTD., ATCO GAS NORTH AND ATCO GAS SOUTH, BOTH OPERATING DIVISIONS OF ATCO GAS AND PIPELINES LTD. TRANSFER OF CERTAIN RETAIL ASSETS TO DIRECT ENERGY MARKETING LIMITED AND PROPOSED ARRANGEMENTS WITH DIRECT ENERGY REGULATED SERVICES TO PERFORM CERTAIN REGULATED RETAIL FUNCTIONS

Decision 2003-098
Application No. 1299855
File No. 6405-20

1 INTRODUCTION AND BACKGROUND

On December 10, 2002 the ATCO Group announced that ATCO Gas and Pipelines Ltd. (ATCO Gas) and ATCO Electric Ltd. (ATCO Electric) had reached an agreement to transfer their natural gas and electricity retail functions to Direct Energy Marketing Limited (DEML). By letter dated April 25, 2003 ATCO Electric and ATCO Gas (collectively ATCO) submitted an application (the Application) to the Alberta Energy and Utilities Board (Board or EUB) for approval of:

- arrangements with Direct Energy Regulated Services (DERS) to perform certain regulated retail functions, and
- the transfer of certain retail assets to DEML.

ATCO Electric specifically requested approval of the following:

- approval of the transfer of the Electricity Assets by ATCO Electric to DERS in accordance with the Electricity Assets Transfer Agreement (EATA) pursuant to section 101(2)(d)(i) of the *Public Utilities Board Act*, R.S.A. 2000, c. P-45 (PUB Act);
- approval (and/or conditional approval)[1] of arrangements with DERS to perform the Regulated Rate Option (RRO) Function in accordance with the RRO Arrangement Agreement pursuant to the relevant sections of the *Electric Utilities Act*, S.A. 2003, c. E-5.1 (EUA) and regulations promulgated thereunder, and in particular section 16 of the *Regulated Rate Option Regulation*, AR 45/2000 (*RRO Regulation*) and section 11 of the *Regulated Default Supply Regulation* AR 168/2003 (*RDS Regulation*);[2]
- approval of the termination of ATCO Electric's 2003 RRO Tariffs upon the complete transfer of the RRO Function to DERS and consistent with the Customer Transition process as fully described in section 1 of Schedule 4.8 of the EATA;

---

[1] Conditional approval may be appropriate given that the approvals requested would be contingent on the legislation and regulations being finalized as anticipated.

[2] Reference is to the draft RDS Regulation released by the Department of Energy for comment on March 31, 2003.

- approval of amendments to ATCO Electric's Terms and Conditions (T&Cs) for Distribution Service Connections and T&Cs for Distribution Access Service; and
- such other further orders, exemptions and declarations of the Board as may be necessary to permit and facilitate the transactions described herein.

ATCO Gas requested the following approvals:

- approval of the transfer of the Gas Assets by ATCO Gas to DERS in accordance with the Gas Assets Transfer Agreement (GATA) pursuant to section 26 of the *Gas Utilities Act*, R.S.A. 2000, c. G-5 (GUA);
- approval (and/or conditional approval)[3] of arrangements with DERS to perform the Default Supply Provider (DSP) Function in accordance with the DSP Arrangement Agreement pursuant to the relevant sections of the GUA and regulations promulgated thereunder, and in particular section 2 of the *Default Gas Supply Regulation*, AR 184/2003 (*DGS Regulation*);[4]
- approval of the termination of ATCO Gas' Gas Cost Recovery Rate (GCRR) upon complete transfer of the DSP Function to DERS and consistent with the Customer Transition process as fully described in section 1 of Schedule 4.8 of the GATA; and
- such other further orders, exemptions and declarations of the Board as may be necessary to permit and facilitate the transactions described herein.

On May 20, 2003 the Board issued a Notice of Hearing (Notice) to intervenors previously registered in the AE 2003-2005 General Tariff Application (GTA) and the ATCO Gas 2003/2004 General Rate Application (GRA), and arranged for publication of the Notice in the major Alberta daily newspapers. In the Notice, the Board advised that it would determine the schedule with respect to this Application after it had received comments from interested parties. In a subsequent letter dated May 26, 2003 the Board clarified the information it sought from intervenors with respect to process, given that the Board had received a related application from DERS for gas and electric default tariffs (Application No. 1302109) should the sale be approved, and notification that ATCO Gas would be filing a gas rate unbundling application (Application No. 1303682) that was also related to this process. Based on the views of the applicant and intervenors, and given the inter-related nature of the various applications, the Board determined that the milestone dates associated with the sale and tariff applications should closely coincide. Therefore, the Board determined that it would be advantageous to have an open record between this Application and the DERS tariff application, which would allow parties to better understand the impact of the proposed sale. The Board also determined that the record up to and including the IR responses in the ATCO Gas Rate Unbundling application would as well be part of the record with respect to the Application.

By letter dated June 13, 2003 the Board established the following schedule to deal with the proposed transfer to Direct Energy:

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[3] Conditional approval may be appropriate given that the approvals requested would be contingent on the legislation and regulations being finalized as anticipated.

[4] Reference is to the draft DGS Regulation released by the Department of Energy on April 1, 2003.

Process Step	Date
Information Requests on Applicant Evidence	June 18, 2003
Information Requests on Evidence from Direct Energy filed in Retail Sale Application	June 25, 2003
Information Responses from Applicants	June 30, 2003
Information Responses from Direct Energy in Retail Sale Application	July 7, 2003
Intervenor Evidence	July 28, 2003
Information Requests on Intervenor Evidence	August 6, 2003
Information Responses on Intervenor Evidence	August 15, 2003
Rebuttal	August 21, 2003
Hearing	August 27, 2003

As indicated, the Board held an oral hearing in Edmonton commencing on August 27, 2003, which lasted for 11 days. The Board panel assigned to this Application was B. T. McManus, Q.C. (Presiding Member), J. I. Douglas, FCA, and W. K. Taylor (Acting Member).

By letter dated October 1, 2003 the Board confirmed with interested parties that written argument for this Application would be due on October 8, 2003, followed by reply argument one week later on October 15, 2003. The Board considers that the record for this hearing closed on October 15, 2003.

2 REGULATORY PRINCIPLES

2.1 Asset Sale Transactions

2.1.1 Applicable Legislation to the Asset Sale Transactions

Pursuant to section 101(2)(d)(i) of the PUB Act and section 26(2)(d)(i) of the GUA, the Board's approval is required for the sale of property by a designated utility that is considered to be outside the ordinary course of business. In the present application ATCO Electric and ATCO Gas seek to sell certain regulated gas and electric utility assets for a nominal consideration to DERS pursuant to the EATA and the GATA (the Asset Sale Transactions).

The Board notes that the value of the regulated assets being transferred is nominal. The request for transfer of these assets to DERS is being advanced in the context of an application *inter alia* for Board approval of each of:

(a) the RRO Arrangement Agreement appointing DERS as the supplier of the Regulated Rate function under the Regulated Rate Tariff in ATCO Electric's service territory, and

(b) the DSP Arrangement Agreement appointing DERS as the supplier of the Default Supply Provider function under the Default Supply Tariff in the service territory of ATCO Gas.

The asset transfers and the appointment of DERS as the supplier of the Regulated Rate function and the DSP function (Default Supplier Appointments) are inextricably linked into a single transaction. One will not happen without the other also being approved by this Board. Accordingly, the Board must consider the Asset Sale Transactions in the context of the Default Supplier Appointments.

2.1.2 No Harm Standard for Asset Sale Transactions

Section 101(2) of the PUB Act and section 26(2) of the GUA do not specify the appropriate test for the Board to utilize when considering an application under these provisions. Without specific legislative guidance, the Board has employed a "no-harm" standard or test when evaluating applications to dispose of rate base assets out of the ordinary course of business under section 101(2)(d)(i) of the PUB Act and section 26(2)(d)(i) of the GUA. The Board's no-harm test considers the transaction in the context of both potential financial impacts and service level impacts to customers. The Board also assesses the prudence of the sale transaction. As well, the Board considers whether the availability of future regulatory processes might be able to address any potential adverse impacts that could arise from a transaction.[5]

In conjunction with the no-harm test, the Board ordinarily also addresses the treatment of gains or losses on the disposition of utility assets. To that end the Board has considered the guidance of the Alberta Court of Appeal in *TransAlta Utilities Corporation v. Alberta (Public Utilities Board)*, (1986) 68 A.R. 171. In the present situation, there are no material proceeds relating to the regulated assets to consider in terms of the appropriate allocation between the utility and its customers.

2.2 Obligation to Supply Regulated Retail Function and Authority to Delegate

2.2.1 Legislative Provisions

The Board has previously concluded that the Asset Sale Transactions are inextricably linked to the Default Supplier Appointments and on that basis alone it could be concluded that the no harm test is appropriate to apply to a consideration by the Board of the application to approve the Default Supplier Appointments. It would be inappropriate, however, to proceed on this basis, before undertaking a review of the relevant legislation and previous Board consideration of the appointment of a regulated rate or default supply provider.

Subject to the prior approval of the Board, ATCO Electric and ATCO Gas are each entitled under the applicable legislation to appoint a provider of electricity services under a regulated rate tariff and a provider of gas services under a default rate tariff (the Regulated Retail Functions). The obligation to provide the Regulated Retail Functions and the ability to authorize others to perform those functions, subject to Board approval, are described below.

---

[5] The Board has recently considered the general principles of the "no-harm" test in several decisions including: Decision 2000-41, TransAlta Utilities Corporation, Sale of Distribution Business (July 5, 2000); Decision 2001-65, ATCO Gas – North (A Division of ATCO Gas and Pipelines Ltd.), Sale of Certain Petroleum and Natural Gas Rights, Production and Gathering Assets, Storage Assets and Inventory: Reasons for Decision 2001-46; Decision 2002-037 ATCO Gas and Pipelines Ltd. Disposition of Calgary Stores Block and Distribution of Net Proceeds – Part 2; Decision 2000-71 UtiliCorp Networks Canada (Alberta) Ltd. and UtiliCorp Networks Canada Ltd., Sale of Certain Assets to EPCOR Energy Services (Alberta) Inc. and Appointment of EPCOR Energy Services (Alberta) Inc. as Provider of the Regulated Rate Option; and Decision 2002-038 TransAlta Utilities Corporation, TransAlta Energy Corporation, and AltaLink Management Ltd. Sale of TransAlta Transmission Assets and Business to AltaLink.

Pursuant to section 104 of the EUA:

> 104 (1)An owner of an electric distribution system may make arrangements under which other persons perform any or all of the duties or functions of the owner under this Act, and the regulations.
>
> (2) No arrangement under subsection (1) affects or reduces the responsibility or liability of the owner to carry out those duties or functions.

Section 7 of the *RDS Regulation* requires each owner to make available to eligible customers in its service area the option of purchasing electricity services pursuant to the regulated rate tariff.

Section 11 of the same regulation provides:

> 11. An arrangement made by an owner under section 104 of the Act under which another person is authorized to perform any or all of the duties or functions of the owner under this Regulation has no effect unless the arrangement is approved by the owner's regulatory authority.

On the gas side, a gas distributor must, pursuant to section 28.1(5) of the GUA provide gas services to customers pursuant to a default rate tariff.

A party who provides gas services to customers pursuant to a default rate tariff is defined by section 28 of the GUA to be a "default supply provider".

Section 4(1)(m) of the *Roles, Relationships and Responsibilities Regulation*, AR 186/2003 (*Gas RRR Regulation*) provides that a gas distributor must act as a default supply provider to customers who pay a default rate for gas.

Also, section 2(1) of the *Gas RRR Regulation* also provides:

> 2(1) Subject to section 28.1(2) of the Act, a gas distributor may authorize other persons to perform any or all of the functions of the gas distributor under this Regulation.

Section 2 of the *DGS Regulation* provides:

> 2. Subject to section 28.1(2) of the Act, a gas distributor may, with the approval of the Board, authorize a person to act as default supply provider in the gas distributor's service area in accordance with this Regulation.

2.2.2 Standard for Consideration of Application to Authorize Others

The principles applicable to the Board consideration of an application by a owner of an electric distribution system to appoint a provider of the regulated rate function or by a gas distributor of a default supply provider are not clear. In Decision 2000-71, UtiliCorp Networks Canada (Alberta) Ltd. (UtiliCorp[6]) and UtiliCorp Networks Canada Ltd., Sale of Certain Assets to EPCOR Energy Services (Alberta) Inc. (EESAI) and Appointment of EESAI as Provider of the RRO, the Board had to consider the appointment of EESAI as the provider of the RRO in UtiliCorp's service area pursuant to section 8 of the *RRO Regulation*, AR 45/2000, as amended.

---

[6] The Company changed the name to Aquila Networks Canada (Alberta) Ltd., (Aquila or ANCA)

In Decision 2000-71 the Board decided to apply the no harm standard to the sale of the assets being transferred in that case and at page 6 concluded that the no harm standard was also appropriate to use in assessing the application to appoint EESAI as the provider of the RRO:

> In the absence of guidance in the legislation itself, the Board is prepared to apply a balancing test similar to that under section 91.1(2)(d) of the PUB Act. In other words, to preserve the public interest, as suggested by UNCA/UNC, the Board should be satisfied that, on balance, customers will at least be no worse off after the transaction.
>
> In this case, since the Board has concluded that the same test should apply in relation to both components of the Application, the Board is of the view that it is appropriate to conduct one balancing test in relation to both components.

The Board finds that the reasoning followed in Decision 2000-71 is directly applicable to the present Application and that the no harm test is the appropriate standard to utilize in assessing the merits of the Applications to appoint DERS as the provider of the Regulated Rate Functions.

2.2.3 The No-Harm Standard

The description of the no harm standard or test and the rationale for applying it, was summarized by the Board in Decision 2000-41 when the Board stated at pages 7 and 8:

> The Supreme Court of Canada has stated that the Board's jurisdiction to "safeguard the public interest in the nature and quality of the service provided to the community by public utilities" is "of the widest proportions."[7] The Board has also noted that its governing legislation provides no explicit guidance for the exercise of the Board's discretion in approving an asset disposition by a designated owner of a public utility.[8]
>
> The Board has held that its discretion under essentially similar provisions of the GU Act must be exercised according to a "no harm" standard. More specifically, the Board has held that it must be satisfied that customers of the utility will experience no adverse impact as a result of the reviewable transaction.[9] The Board considers that a similar principle applies when it is asked to approve transactions pursuant to Section 91.1(2) of the PUB Act and believes that guidance in the application of this principle can be found in other provisions of its governing legislation. The Board believes, however, that in applying this principle, it must have regard to the policy of deregulation reflected in the EU Act, which distinguishes this case from those involving similar provisions of the GU Act.
>
> …
>
> The Board believes that its duty to ensure the provision of safe and reliable service at just and reasonable rates informs its authority to approve an asset disposition by a public utility pursuant to Section 91.1(2) of the PUB Act. Therefore, the Board is of the view that, subject to those issues which can be dealt with in future regulatory proceedings …, it must consider whether the disposition will adversely impact the rates customers would

---

[7] *ATCO Ltd. v. Calgary Power Ltd.* [1982] 2 S.C.R. 557, at 576 (per Estey J.)

[8] Decision U99102, p.7

[9] See Decision U98084, *NOVA Corporation, et al., Application for Regulatory Approvals in Connection with a Proposed Merger of NOVA Corporation and TransCanada Pipelines Limited* (May 19,1998), p. 6; Decision U98097, *Westcoast Energy Inc. et al., Sale of Shares in Centra Gas Alberta Inc. from Westcoast Energy Inc. to AltaGas Services Inc.* (June 29, 1998), p.3; Decision U99102, *supra*, p.8

> otherwise pay and whether it will disrupt safe and reliable service to customers. As already noted, the Board also accepts that it must assess potential impacts on customers in light of the policy reflected in the EU Act, namely the unbundling of the generation, transmission and distribution components of electric utility service and the development of competitive markets and customer choice. As a result, rather than simply asking whether customers will be adversely impacted by some aspect of the transactions, the Board concludes that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case. If so, then the Board considers that the transactions should be approved.

The Board has also considered that it has the ability to attach conditions to any approval of a sale transaction and that the proceeds of sale may be available to offset or mitigate potential harm to ratepayers.

In Decision 2001-65 the Board stated:

> The Board considers that its power to mitigate or offset potential harm to customers by allocating part or all of the sale proceeds to them, flows from its very broad mandate to protect consumers in the public interest. This mandate has been recognized by the Alberta Court of Appeal[10] and the Supreme Court of Canada.[11] It has also been referred to recently on a number of occasions by the Board.[12] In keeping with this broad mandate, section 10(3)(d) of the Alberta Energy and Utilities Board Act[13] authorizes the Board to attach conditions to any order that the Board considers to be in the public interest. In the Board's view, conditions allocating sale proceeds to customers in order to mitigate harm caused by proposed asset dispositions are fully within its jurisdiction as characterized by the courts and reflected in the Board's governing legislation.[14]

In the present case, the proceeds from the regulated assets are nominal, and therefore an allocation of proceeds from regulated assets is not available to potentially offset harm if any to ratepayers.

2.3 The Separation Cost Provisions

2.3.1 Background

In the previous subsections of section 3 of this Decision, the Board has described the legislation applicable to the Board's consideration of the Asset Sale Transactions and the Default Supplier Appointments. These sections also provide the Board's conclusion that the no harm test is applicable to both the Asset Sale Transactions and to the Default Supplier Appointments and has described the development of the no harm test. The purpose of this subsection of the Decision is to consider the provisions of section 5(1) of the *RDS Regulation*, section 5 of the *Distribution Tariff Regulation*, AR 162/2003 (*DT Regulation*), section 5 of the *DGS Regulation*, and section 10 of the *Natural Gas Billing Regulation*, AR 185/2003 (collectively the Separation Cost Provisions) and to determine the impact, if any, of these provisions on the application of the no harm test to either or both of the Asset Sale Transactions or to the Default Supplier Appointments.

---

[10] *Dome Petroleum Ltd. v. Alberta (Public Utilities Board)* (1976) 2 A.R. 453, *affd.* [1977] 2 S.C.R. 822.

[11] *ATCO Ltd. v. Calgary Power Ltd.* [1982] 2 S.C.R. 557, at 576 (per Estey J.).

[12] For example, Decision 2000-41, page 7; and Decision 2000-46, *ESBI Alberta Ltd., 2001General Tariff Application, Phase I & II, Part A: System Support Services – Thermal Power Purchase Arrangements (Appendix E)* (July 11, 2000), page 9.

[13] S.A. 1994, c. A-19.5, as amended

[14] Decision 2001-65, p. 16

2.3.2 The Legislation

2.3.2.1 Electricity - Regulated Rate Tariff and Distribution Tariff

Section 5(1) of the *RDS Regulation* provides:

> 5(1) When considering an application for approval of a regulated rate tariff under section 103 of the Act, the Board must
>
> (a) have regard for the principle that a regulated rate tariff must provide the owner with a reasonable opportunity to recover the prudent costs and expenses incurred by the owner and a reasonable return, and
>
> (b) examine the reasonableness of the owner's billing costs and other costs the Board considers appropriate in the prevailing circumstances, without regard to any overall increase in costs due to the separation of distribution access service and the provision of electricity services.

Section 5 of the *DT Regulation* provides:

> 5 When considering an application for approval of a distribution tariff under section 102 of the Act the Board must examine the reasonableness of the owner's billing costs, and other costs the Board considers appropriate in the prevailing circumstances, without regard to any overall increase in costs due to the separation of distribution access service and the provision of electricity services.

2.3.2.2 Gas – Default Rate Tariff and Distribution Tariff

Section 5 of the *DGS Regulation* provides:

> 5 When considering an application for approval of a default rate tariff, the Board must
>
> (a) have regard for the principle that a default rate tariff must provide the default supply provider with a reasonable opportunity to recover the prudent costs and expenses incurred by the default supply provider and a reasonable return on costs deemed eligible by the Board, excluding the cost of gas that is provided and delivered, and
>
> (b) examine the reasonableness of the default supply provider's billing costs, and other costs the Board considers appropriate in the prevailing circumstances, without regard to any overall increase in costs due to the separation of gas distribution service and the provision of gas services.

Section 10 of the *Natural Gas Billing Regulation* provides:

> 10. When considering a gas distributor's application for approval of its gas distribution tariff, the Board must examine the reasonableness of the gas distributor's billing costs, and other costs the Board considers appropriate in the prevailing circumstances, without regard to any overall increase in costs due to the separation of gas distribution service and the provision of gas services.

2.3.3 Are the Separation Cost Provisions Relevant to a Consideration of the Asset Sale Transactions and to the Default Supplier Appointments?

Views of the Parties

Views of ATCO and DEML

ATCO and DEML took the position that it was clear from the wording of the Separation Cost Provisions that the Alberta Government considers increased costs associated with the separation of the distribution function and the Regulated Retail Functions to be acceptable within the overall public interest. They take the position that in enacting the Separation Cost Provisions, the Government has assessed the potential for longer term benefits flowing from separation of the distribution and Regulated Retail Functions as being greater than the costs incurred to achieve that result.

With respect to the interveners argument that the Separation Cost Provisions were only intended to apply to tariff applications and were therefore irrelevant in the context of the present Application, ATCO and DEML responded by considering the outcome of such an assertion. If reasonable costs, prudently incurred, arising as a consequence of the separation of the distribution function and the Regulated Retail Functions, are expressly permitted pursuant to the Separation Cost Provisions in the context of a tariff proceeding, it would be illogical to consider these same costs as constituting harm in the context of the retail sale and the Default Supplier Appointment Agreements. ATCO and DEML argued that the application of a standard at the point of transfer of the Regulated Retail Function that would not be appropriate when considering the subsequent Regulated Retail Function tariffs or distribution tariffs would amount to doing indirectly what the Board could not do directly.

Views of the Intervenors

The intervenors took the position that the Separation Cost Provisions did not apply to a consideration of the Asset Sale Transactions or to the Default Supplier Appointments. In general, intervenors took the view that the Separation Cost Provisions were intended as a direction to the Board only in the context of a regulated rate tariff, a default rate tariff, or an electric or gas distribution tariff application. These provisions should not be interpreted so as to apply to the relief requested in the Application and should not impede the Board in applying the no harm test in a manner consistent with previous decisions. It was argued that legislative provisions that were restrictive or limiting of the Board's general powers should be strictly construed to apply only in the circumstances specifically provided for in the provision. If the legislature had intended the provisions to be broader, it certainly could have provided more comprehensive language.

In addition, Calgary argued that the asset sale and transfer of the Regulated Retail Function and the separation of the distribution function from the Regulated Retail Function were two separate matters which the Applicant had tried to cast as a single step covered by the Separation Cost

Provisions. Calgary argued that the Separation Cost Provisions applied only to the separation of the functions and that the sale of the Regulated Retail Function was a separate matter and should be subject to the no harm test as a minimum standard without any modification. Consequently, the outcome of the business decision to sell the Regulated Retail Function ought not to increase costs beyond that which ATCO would have incurred to provide the service after the services had been functionally separated. With respect to the separation of the distribution function and the Regulated Retail Function, only those costs that were due to the functional separation, as opposed to the sale of the business, should be considered as falling under the Separation Cost Provisions. In Calgary's view, costs that are incremental to the costs that would have arisen in connection with an internal ATCO separation of the distribution and Regulated Retail Functions are not protected under the Separation Cost Provisions. Calgary also submitted that costs incurred in connection with the separation of regulated and unregulated retail functions are not covered by the Separation Cost Provisions.

Views of the Board

The Separation Cost Provisions provide direction to the Board in the context of an application for an electric regulated rate tariff, a gas default rate tariff or an electric or gas distribution tariff. The Board recognizes the arguments of the intervenors that the Separation Cost Provisions should not apply to either the Asset Sale Transactions or to the Default Supplier Appointments and that the no harm test should fully apply without giving consideration to the Separation Cost Provisions. The Board also notes the argument that it should consider the separation of the distribution function from the Regulated Retail Functions as independent from the sale or transfer of the Regulated Retail Functions and that the Separation Cost Provisions should only apply to the former, and not to the latter.

The Board considers that the intent of the legislation is aimed at giving the Board direction in its consideration of the billing costs and other costs that may arise in the course of separating the pipes and wires distribution function from the Regulated Retail Function. It may have been possible for ATCO to have first separated the distribution and the Regulated Retail Functions internally and then to enter into the Asset Sale Transactions and the Default Supply Appointment Agreements, but that is not what was done. The Board must deal with the Application as it is and must apply the no harm test in light of the legislation and in the circumstances before it. As previously noted, it was the intention of ATCO and Direct Energy to inextricably connect the Asset Sale Transactions and the Default Supplier Appointments. One aspect of the transaction will not occur without the other and it is the view of the Board that together, these two components form a single overall transaction. Therefore the Board considers that the two halves of the single transaction should not be separated and treated in a manner that could result in inconsistent outcomes. If the Separation Cost Provisions apply to either aspect of the transaction, they must be considered to apply to the entire transaction.

The Board is of the view that the Separation Cost Provisions do apply to the Board's consideration of the Asset Sale Transactions and to the Default Supplier Appointments as they have been brought forward for consideration by ATCO in the context of an attempt to achieve the separation of the distribution and retail functions. To find otherwise, could result in the Board determining that the potential harm resulting from either the Asset Sale Transactions and/or the Default Supplier Appointments exceed the unmodified financial harm parameters ordinarily considered in the application of the no harm test with the consequent denial or conditioned approval of the applications. Such a result could potentially defeat the apparent purpose of the

Separation Cost Provisions to enable or to facilitate the separation of distribution and Regulated Retail Functions by expressly recognizing that the separation may result in increased billing and other costs, and by directing the Board to disregard costs of this nature that are reasonably incurred in achieving this outcome.

2.3.4 Application of Separation Cost Provisions to the No Harm Test

In sections 3.1 and 3.2 the Board determined that the no harm test applies to both the Asset Sale Transactions and to the Default Supplier Appointments, respectively. In section 3.3.3 the Board determined that the Separation Cost Provisions do apply to the Board's consideration of the Asset Sale Transactions and to the Default Supplier Appointments as they are brought forward for consideration in the context of separating the distribution and regulated retail functions. The purpose of this section of the decision is to determine the manner in which the Separation Cost Provisions affect the application of the no harm test.

Views of the Parties

Views of ATCO and DEML

ATCO and DEML took the position that all reasonable costs incurred in the separation of the distribution and Regulated Retail Functions should be extended the benefit of the Separation Cost Provisions and excluded from the application of the no harm test. To the extent that increases in billing costs and other costs that the Board considered appropriate in the prevailing circumstances, are found to be prudent and reasonable, then the Board should not consider such cost in evaluating the present Application.

ATCO and DEML also argued that the costs relevant to a consideration of the Separation Cost Provisions were the fully burdened costs of a stand alone entity and not the incremental costs that may have resulted had ATCO continued to provided the services following an internal functional separation of the distribution function and the Regulated Retail Functions.

Views of the Intervenors

Intervenors took the position that the Separation Cost Provisions did not apply to a consideration of the Application. In the context of how the Separation Cost Provisions would apply in connection with a tariff proceeding by a default supply provider following an appropriate separation of the Regulated Retail Functions from the distribution function, intervenors appeared to support the position that only reasonable costs, prudently incurred and due to the separation, could support a claim to shelter under the Separation Cost Provisions.

Intervenors also took the position that the Separation Cost Provisions were relevant only to the reasonable costs, prudently incurred on an incremental basis. Only those incremental costs that would have resulted from a functional separation within the ATCO Group of companies of the distribution and Regulated Retail Functions could be legitimately considered under the Separation Cost Provisions.

Views of the Board

The Board is of the view that the Separation Cost Provisions require the Board to disregard all billing costs and other costs that are reasonable, prudently incurred and that are due to the separation of the distribution services and electricity and gas services. To this end, to the extent that reasonable costs are prudently incurred in connection with either the Asset Sale Transactions or the Default Supplier Appointments that are due to the separation of the Regulated Retail Functions and the distribution functions and that would ordinarily be considered in the Board's application of the no harm test in assessing impacts to customers, such costs shall not be included in the Board's analysis. Accordingly, the Board's no harm analysis must first identify those costs, if any, that would ordinarily be included in the traditional application of the no harm test, determine if any of those costs should be excluded from consideration on the basis that they were reasonably and prudently incurred in connection with the separation of the regulated distribution functions and the Regulated Retail Functions, and then reach its decision having excluded any such costs from its consideration.

With respect to whether the costs to be considered in this analysis are incremental, fully burdened costs or some other level of costs, the Board is of the view that, in general, the fully burdened cost standard is appropriate in the context of applying the no harm test in the circumstances of the Application. The provisions of the legislation outlined in section 3.2.1 of this Decision support the ability of ATCO to use its discretion in appointing a party to carry out the Regulated Retail Functions. The legislation also contemplates and permits the possible separation of the distribution and Regulated Retail Functions. Accordingly, it is the Board view that the Separation Cost Provisions should be applied in the context of costs arising from the form of separation of the distribution and Regulated Retail Functions chosen by ATCO.

The treatment of each relevant cost category from a no harm test perspective is dealt with in other portions of this Decision and will be addressed in detail in the context of the tariff applications of DERS.

3 HARM/NO HARM TEST

3.1 Financial Impacts

One of the measures of the potential harm to customers of a sale of a business or a portion of a business is the expected financial impact on customers. In previous Board decisions dealing with the sale of a business, the Board considered that customers should remain at worst "cost neutral" as a result of a sale. Generally this has included ensuring that any premium paid for the purchase of a business would not be recovered through rates.

Views of the Intervenors

AUMA/CE

The Alberta Urban Municipalities Association/City of Edmonton (AUMA/CE) argued that the same principles should apply as used in previous sale decisions. AUMA/CE submitted that the Board has the jurisdiction to apply the no-harm test as applied in past decisions and section 5(b) of the *DGS Regulation* does not change nor impact the no-harm test.

Calgary

The City of Calgary (Calgary) estimated that the net increase in costs to customers of ATCO Gas due to the proposed sale is $47.4 million annually. Calgary based this estimate on the evidence presented at the ATCO Gas Unbundling application and the DERS application for a default gas rate. Using this estimate would result in an average residential bill increase of approximately 20%, excluding energy charges.

Calgary argued that the change in regulations does not limit, diminish or reduce the no-harm approach. Calgary suggested that the *DGS Regulation* (specifically section 5) relates to the setting of tariffs on a prospective basis. Calgary submitted that the application and interpretation of the new regulations should first be dealt with at the DERS tariff application and at a future ATCO distribution GRA.

Calgary stated that the regulations do not mention recovery of costs incurred prior to the provision of gas services by a default rate provider. Calgary noted that the Board must approve the appointment of a default supply provider. Calgary suggested that the need for approval would be redundant if there is no discretion for the Board to make its approval.

Calgary submitted that the increase in overall billing costs should be allowed only if the increase is due to the separation of the distribution and default supply provider functions. Calgary stated that the determinative factor in deciding if a cost is allowable becomes a question of cost causality. Calgary stated that, while legislated costs can be included in rates, sale costs must not be included in rates as they constitute harm and should not be thrust upon customers.

Calgary argued that if ATCO chose to remain the default supply provider these extra costs would not arise. Customers should not pay for DEML to set up its operations, particularly when the same operations are already in place at ATCO and ratepayers have been paying for them for years. Accordingly, Calgary submitted that the legislation cannot have caused them. If ATCO had authorized another Alberta utility with existing billing and customer care facilities to provide the default supply function, integration and delay costs would not have arisen. Calgary suggested that, under this scenario, there may have been synergistic opportunities which would allow for cost reductions.

Calgary argued that the *Code of Conduct Regulation*, AR 183/2003 under the *Gas Utilities Act (Gas Code Regulation)* does not preclude a distributor and a default supply provider from sharing customer information. A distributor and a default supply provider could share a common billing system, including a common database.

Consumer Group

The Consumer Group[15] stated that the evidence indicated that there would be a significant increase in costs to be recovered annually from customers as a result of the proposed sale of ATCO's retail assets to DERS and the consequent separation of the distribution function from the retail function. The Consumer Group submitted that the test used in Decision 2000-41 should continue to be applied and that it should be possible to conclude that, after a sale, the balance should favour customers or they should at least be no worse off.

The Consumer Group noted that separation of the retail and distribution functions is not mandated in the legislation. The Consumer Group submitted that the Board must first determine if the transaction is in the public interest after having weighed the positive and negative impacts. On this basis, the Consumer Group submitted that the application doesn't meet the test of demonstrating that the proposed increases in costs would be offset by present or even future benefits to customers.

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[15] The Consumer Group – Federation of Alberta Co-ops Ltd. and Gas Alberta Inc., Alberta Association of Municipal Districts and Counties, Alberta Rural Utilities Association, Prairie Power Ltd., and Alberta Federation of REAs

Furthermore, the Consumer Group submitted that the manner in which this transaction has been structured has resulted in higher costs than from a more prudent approach to separation of retail from distribution services. The Consumer Group offered some suggestions of alternative arrangements that could have been made.

The Consumer Group noted that the *Natural Gas Billing Regulation* permits a default supply provider to authorize the distributor to carry out billing on its behalf.[16] The Consumer Group suggested that there was no need to maintain two separate databases and billing runs. Issues around the disclosure of information could then be addressed through a code of conduct between the DSP and the distributor.

The Consumer Group also submitted that any concerns as to the costs of a stand-alone entity could be addressed through a fair allocation of costs between the distributor and the DSP. This would achieve a level playing field between the DSP and other retailers and would not result in a cost advantage for the DSP over other retailers for billing costs. Similarly, any concerns regarding the use of single database to be maintained by ATCO I-Tek could be addressed through an appropriate code of conduct for ATCO I-Tek employees and a suitable security protocol.

The Consumer Group concluded that DERS and ATCO have chosen a costly, duplicative and exclusive arrangement with ATCO I-Tek, which results in additional revenues to ATCO and significant financial harm to customers. The Consumer Group stated that, if only the additional billing costs are considered, the financial impact would be about $24 million for gas Default Rate Tariff customers and $5 million for electric Regulated Rate Tariff (RRT) customers in 2004. The Consumer Group submitted that this is higher than what is reasonable for the provision of retail service on a stand-alone basis. The Consumer Group also submitted that the attempt by DERS to recover pre-operating and other integration costs is unprecedented in Alberta and that the significant increase in costs for parental guarantees for gas purchases is a direct result of the change of ownership.

HVAC

HVAC[17] noted that the agreement between DERS and ATCO I-Tek provides ATCO I-Tek with an expected annual revenue payment of approximately $48 million per year. HVAC stated that, although the services which ATCO I-Tek will provide to DERS are not substantially different than those currently provide to ATCO, the cost to DEML is about $30 million per year higher relative to the cost of providing the service to ATCO.

The Application seeks approval of the transfer pursuant to section 26 of the GUA and appointment under section 2 of the *DGS Regulation*. HVAC argued that, if the transaction is approved, there will be negative financial implications which have not been meaningfully supported nor justified and that impact the public interest.

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[16] Section 2(4) of the *Natural Gas Billing Regulation*, AR 185/2003

[17] HVAC – Lennox Inc., Heating and Refrigeration and Air Condition Institute of Canada, Mechanical Contractors Association of Alberta, and Sheet Metal Contractors Association of Alberta

HVAC supported the evidence of Calgary. HVAC did not accept that the intent of the government's policy was to allow a blank cheque in determining the additional costs that may be incurred in separating ATCO's retail business.

DEML

DEML identified three elements of financial impacts:

- potential impact on the distributor's rates;
- recovery of the distributor's costs pertaining to the asset purchase agreement, arrangements and appointments; and
- recovery of the consideration paid, and other potential impacts on the regulated retail service provider's rates.

DEML confirmed that it would not seek to recover through the RRT or the DRT the consideration to be paid to ATCO nor any transaction costs. DEML also noted its understanding that ATCO's shareholders would be responsible for any transaction costs that are related to the negotiation, drafting and finalization of the transaction agreements and to closing the transaction if the Application is approved.

DEML submitted that the recent legislative amendments related to the restructured energy market in Alberta must be taken into account, and therefore the potential increase in total costs to customers arising from the RRT or the DRT and the related distribution tariffs should not be factored into the No Harm test determination. DEML stated that any cost increases are the product of the changes in the legislation and regulations that mandate separation of the regulated retail function from the distribution function. DEML submitted that, given the mandated separation, the costs should be recovered from customers in the same manner that the benefits of restructuring accrue to customers.

DEML considered that, while the Government did not intend to mandate the separation of ownership, it does require the complete separation of the functions. DEML suggested that the *DT Regulation* and the *Natural Gas Billing Regulation* contemplate that:

- the retail function will be separated from the distribution function;
- the costs related to providing the separated retail function will be unbundled from the distribution function; and
- the Board shall not be permitted to have regard to overall increases in costs due to the separation and unbundling.

DEML argued that all costs incurred to provide "electricity services," "gas services," and distribution services, if prudent, must be approved for recovery. DEML also argued that it is necessary for separation to be complete in order to achieve the government's objective to refine and strengthen the retail energy market in Alberta. DEML stated that a regulated retail service provider must operate on a stand-alone, fully burdened cost basis in order for competitive retailers to be able to compete against regulated offerings on a level playing field basis. DEML submitted that the change from the temporary RRO function to the RRT function, which has no expiry period, was an indication that the stand-alone, fully burdened cost approach is supported by the Alberta government.

DEML also submitted that the Government considered that increased costs associated with the separation of distribution and regulated retail functions to be acceptable within the overall public interest. Therefore, it would not be logical to conclude that costs considered to be prudently incurred under section 5 of the *RDS Regulation* or the *DGS Regulation* constitute harm when considering the Application.

Views of ATCO

ATCO submitted that the Board should not focus only on section 5 of each of the *DT Regulation* and the *DGS Regulation* but the Board should also look to its legislative mandate to ensure that rates are just and reasonable, which would apply to both the distribution tariffs and the default supply provider tariffs. ATCO noted that subsection 3(1) of the *DGS Regulation* (and the parallel provision with respect to electricity) provides that the DSP is entitled to recover the prudent costs and expenses of providing gas services to customers. ATCO argued that if a cost is found to be just and reasonable and needed to provide regulated utility service, it cannot then be found that these same costs cause harm to customers. ATCO stated that, if specific costs of providing service are determined to be inappropriate, the Board has full, explicit authority and jurisdiction to disallow such ongoing costs in the context of the appropriate rate proceedings.

ATCO submitted that, in examining the scope of costs that should be taken into consideration in the context of the Transfer Application, regard should be given to the character and nature of the cost that is being examined. ATCO argued that the costs that Intervenors are addressing in the Transfer Application have nothing to do with the Application itself. ATCO suggested that these costs are directly associated with the provision of ongoing service by the regulated rate provider to customers and are not costs that are incurred by any party at the point of transfer.

ATCO also suggested that the Board should have regard to the explicit provisions of its governing legislation as well as Government policy that provides insight into what the Government is attempting to accomplish via its legislation. ATCO noted the process that led up to the enactment of the current legislation and the Board decisions that were available at the time that the legislation was enacted. ATCO stated that:

> The treatment accorded ANCA was clearly in the forefront when the Government's consultation process was occurring. Additionally, the current transaction was very much in play, with both ATCO and DEML actively participating in the process, in an attempt to ensure that the legislative framework ultimately adopted by the Government of Alberta established a level playing field for all market participants.[18]

ATCO submitted that the Government's intent was clearly that industry transition costs not be borne by the parties to a particular transaction. ATCO stated that in determining the reasonableness of the DRT and the RRT, the onus remains on the applicant to demonstrate that the costs for which it is seeking approval are reasonable in the circumstances; and that such costs are not above what a reasonable cost would be for the services being provided. The Board is only precluded from comparing the costs in the current DRT and RRT application to what such billing costs were when the function was provided by the integrated utility. ATCO suggested such a comparison is what the Intervenors have focused on.

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[18] ATCO Argument, pp. 11-12

ATCO noted that the Regulations also dealt with "other costs the Board considers appropriate in the prevailing circumstances." ATCO suggested that this was an indication that the Board, when considering the appropriate level for the DRT and RRT should consider costs in addition to billing costs.

ATCO stated that Government statements have indicated that customers' interests are best served through the development of a competitive retail market. ATCO indicated that Government policy has suggested that all customers will receive benefits from downward pressure on commodity prices, competitive pressures on billing and other non-energy costs, benefits from being able to choose products, the ability to choose another retailer and the ability to be able to respond to retailers' offers.

Notwithstanding the above comments, ATCO commented on the purported cost increases discussed by Intervenors. ATCO noted that Calgary indicated that the increase in costs to gas customers would be approximately $60 per year. ATCO stated that Calgary's calculation was incorrect and noted that a rough estimate provided by ATCO was about $0.23/GJ which would work out to an average increase per household of approximately $31.72 per year. ATCO noted that this estimate did not take into account the Board's review of the revenue requirement for DERS.

ATCO further stated that, if this transaction is not completed, the likely result would be a reorganization by ATCO that would require a separate billing system with costs equivalent to those proposed by DERS. ATCO stated that separation of functions is in the public interest and, if this is done, ATCO's costs would be very similar to what DERS is forecasting.

ATCO concurred with the position taken by DERS on the issue of mandatory separation of retail and distribution functions. ATCO stated its view that the "distributor" business model inappropriately binds together the distribution and retail tariffs, and associated regulatory processes, in a manner that is inconsistent with the legislated market structure.

In response to Intervenor concerns about additional costs that may result from the transaction, ATCO stated that the noted costs are in the context of the ongoing provision of regulated service by DERS. ATCO noted that the appropriate forum to address such cost issues is in the context of the DERS Tariff Application where the Board has the explicit authority and jurisdiction to establish just and reasonable rates for the provision of the regulated service by DERS.

In response to Calgary, ATCO questioned Calgary's definition of billing costs and stated that, if separate computer runs are required in order to obtain information with respect to the separate line items on the bill, then all associated costs constitute billing costs. With respect to Calgary's claim of a $47 million increase in cost, ATCO stated that Calgary was attempting to compare pre-separation costs in the integrated utility with post-separation costs in the new environment. ATCO argued that the post-separation costs without separation of ownership would be almost the same as the post-separation costs with separate ownership.

Views of the Board

DEML has stated that it will not recover any premium paid for the purchase of the ATCO retail business through customer rates. The Board confirms that it would be inappropriate for DERS to recover from customers any amount of the premium paid to ATCO and will not allow DERS to recover the premium in any future rate applications.

In previous Board decisions respecting the sale of a business, the Board has determined that to the extent that it could deal with any potential financial impact of a sale in future rate applications made by the new owner, that it would do so. In this instance, DERS filed a rate application at the same time as the sale application was being considered and ATCO Gas filed an application with respect to the unbundling of its gas rates. Therefore, many Intervenors have argued that the financial impacts based on DERS' proposed costs in the RRT and DRT application should be considered as financial harm. Also, parties have debated the extent to which section 5 of the *DGS Regulation* and the *RDS Regulation* should or should not impact the Board's findings of financial harm.

As noted in section 3 of this decision, the Board considers that it is not possible to exclude consideration of section 5 of the *DGS Regulation* and the *RDS Regulation* in making an assessment of this Application. Although these Regulations apply specifically to an application for DRT and RRT service, it is not possible to ignore the policy intent in these Regulations as it should apply to this Application. The Board considers that, whereas in previous Decisions the Board has stated that there should be no harm to customers as a result of a sale and considered that this included no financial harm, the new Regulations have somewhat modified the Board's previous no harm test. The Board still considers that it has the responsibility to apply the "no harm" test as it has previously in other sale applications, but notes that it must allow for the possibility of some additional costs being borne by customers as a result of the sale. However, the Board considers that the determination of the appropriate level of the costs and the determination of what are prudent costs to be allowed as a result of the separation of the functions will be determined in the RRT and DRT applications by DERS, and in future distribution tariff applications by ATCO. The Board notes the comments of ATCO that in determining the appropriate level of the RRT and the DRT, the Board must ensure that the costs are not above what a reasonable cost would be for the services being provided. The Board concurs that this is its mandate and must make the appropriate determinations in the RRT and DRT application and in future distribution tariff applications, regarding the appropriate level of costs to be allowed and the appropriate tests that can be applied to determine whether or not the costs are prudent.

Therefore, the Board will take into account, in the DERS' RRT and DRT applications, that the financial impact of this sale will be limited to only those costs prudently and reasonably incurred as a result of the separation of the distribution and retail functions. As allowed in section 5 of the *DGS Regulation* and the *RDS Regulation* this may include some costs that have arisen as a result of the separation.

3.2 Continuity of Safe and Reliable Service

Views of the Intervenors

AUMA/CE

AUMA/CE noted the assurances that were offered by TransAlta Utilities Corporation (TransAlta), UtiliCorp Canada Corp., and EPCOR Utilities Inc. in the sale applications of the TransAlta Distribution business to UtiliCorp (Board Decision 2000-41) and the subsequent application by UtiliCorp to sell its retail business to EESAI (Board Decision 2000-71). AUMA/CE stated that, despite all of the assurances offered, history showed that there were numerous billing problems for customers of Aquila/EESAI.

AUMA/CE submitted that if the Application is approved on the accelerated schedule proposed by ATCO and Direct Energy, there will be harm done to ATCO's customers. AUMA/CE noted that as of the date of Argument, DERS had not tested its computer systems with live data; neither ATCO nor DEML had applied for and received approval from the Market Surveillance Administrator (MSA) or the Board for their respective Compliance Plans; and DERS had not yet made a submission to the Competition Bureau.

AUMA/CE submitted that approval of the Application can take place with the appropriate conditions and requirements as recommended by AUMA/CE. To the extent that there is the potential for harm to customers arising from the sale, AUMA/CE recommended that proceeds from the sale of the regulated assets be held back from ATCO.

Calgary

Calgary noted that section 28.1(2) of the GUA states that no authorization may be given that lessens or removes the responsibility or liability of the gas distributor, default supply provider or retailer from carrying out the functions in respect of which the authorization is given. Therefore Calgary argued that ATCO retains a residual and ongoing responsibility to ensure that DEML's provision of regulated retail services is carried out in a manner that is consistent with current service levels. Calgary suggested that the liability for any declines in service level will rest with ATCO as DEML is an agent of ATCO Gas. Calgary noted that ATCO has not included any legal provision in any of the agreements to monitor or audit DEML to ensure that a proper job is being performed.

Calgary recommended that ATCO should be held accountable pursuant to the GUA if problems arise with respect to the quality of service provided by DEML. Calgary stated that ATCO should take all reasonable steps to ensure that the transition is seamless. Calgary stated that requiring ATCO to supervise DEML is appropriate due to the following:

- the lessons learned from the Aquila experience;
- the numerous fines and penalties imposed on Centrica plc owned companies in other jurisdictions for improper practices and conduct;
- Centrica plc owned companies have pulled out of markets that were not profitable;
- DEML's lack of experience as a regulated service provider; and
- not all problems related to industry restructuring can be predicted.

Calgary submitted that ATCO did not offer any evidence or opinion on whether quality of service or reliability of service would improve as a result of this transaction.

Consumer Group

The Consumer Group noted that DEML has entered the Alberta marketplace but hasn't committed to being a full participant unless this sale transaction proceeds. The Consumer Group noted a number of concerns that it has with DEML's ability to continue to provide reliable regulated services for customers. The Consumer Group stated that DEML has not provided adequate evidence that it will continue to provide at least the same level of service to customers.

The Consumer Group noted the following:

- DEML and its affiliates are not in the business of providing regulated services.
- ATCO was content with DEML's experience based on the volume of transactions rather than the reliability of the provision of these regulated services.
- Centrica's business plan, which forms the basis for DEML's business plan in Alberta, is to buy the customer information/base and move the regulated customers to retail contracts with Direct Energy Preferred (DEP) and to cross-sell other unregulated services to this customer base.
- Centrica's business plan has included exiting the market if its goals are not met or returning customers to the supplier of last resort/default supplier.
- DEP won't enter the Alberta market without the benefits of 'owning' the customer base.
- The key motivation for DEP is the competitive advantages the regulated customer brings including financially supporting the infrastructure of the business and the contact mechanisms with customers to cross sell.
- Most major jurisdictions that Direct Energy or its affiliates have operated in have fined or sanctioned Direct Energy for abuses of its marketing practices, hundreds of thousands of dollars of fines/sanctions. Those customers most impacted will be the low-income earners and seniors.
- Direct Energy's marketing abuses have caused it to withdraw from markets or be sanctioned and prohibited from marketing for periods of up to one year.
- Direct Energy is not paying for the right to provide continued, reliable regulated services to customers in Alberta but to access a customer base.

The Consumer Group argued that the sale does not further retail competition in the manner envisioned by the Alberta government and is not in the public interest. The Consumer Group also noted the following from Decision 2000-41, that:

> … it is reasonable to expect that the service customers receive following the sale will not deteriorate and may even be better given UtiliCorp's eagerness to enter this market. The Board also notes the less tangible, but no less possible, benefits that customers may

> realize if UtiliCorp is allowed to enter the market as part of the ongoing deregulation of the electricity industry in Alberta.[19]

The Consumer Group noted that the eagerness by UtiliCorp to enter the Alberta market did not equate to improved service to customers. The Consumer Group noted some of the difficulties that arose with respect to customer service as a result of the sale of the UtiliCorp retail business to EESAI. The Consumer Group stated that the benefits that were thought possible did not materialize. The Consumer Group recommended that these events and the marketing and business plans of DEML and its affiliates should be noted when considering the assurances made by DEML that customers will be better served with its entrance into the market.

DEML

DEML submitted that approval of the Application will have no negative impact on the safety of electricity or gas services. DEML stated that the distribution systems will continue to be operated by the ATCO entities and DEML will not be involved in safety issues.

DEML stated that it is an experienced provider of retail electricity and gas services with a track record in Canada and through its affiliates around the world.

DEML noted that, under the Master Services Agreement (MS Agreement), ATCO I-Tek will continue to provide billing and customer care services similar to what they have provided to ATCO in the past. DEML stated that its decision to enter into the MS Agreement with ATCO I-Tek was based on having an established, experienced customer service provider as it aids a smooth transition and avoids problems being experienced by other players in the Alberta marketplace. DEML also stated that the single source provided by ATCO I-Tek for call centre, billing and credit management functions also avoids the use of multiple service providers including those who do not have the Alberta market experience possessed by ATCO I-Tek.

DEML noted that ATCO Electric and ATCO Gas continue to have the residual obligation to carry out the regulated retail functions under section 104(2) of the EUA and under section 28.1(2) of the GUA.

Views of ATCO

ATCO stated that both ATCO Electric and ATCO Gas have recently completed rate applications where matters such as service quality levels are more appropriately addressed. ATCO stated that it is unfair if it is painted with the experience of others in the marketplace. ATCO argued that it has not experienced the same types of service quality concerns. ATCO noted that both it and DERS are very much aware of the difficulties encountered by Aquila/EPCOR and are taking explicit steps to avoid similar problems.

ATCO noted that if the Application is approved, ATCO Electric, ATCO Gas and DERS will all remain regulated entities with respect to the functions they perform. Therefore ATCO submitted that, if any service quality issues arise, they can be addressed. ATCO stated that the submissions of Calgary regarding ATCO supervising DERS to ensure that they maintain service quality levels is unnecessary as the Board has full direct authority with respect to service levels that regulated entities are required to maintain. ATCO argued that it would be duplicative to establish ATCO as a "quasi-regulator" with respect to DERS and to have it monitor and enforce service levels. ATCO stated that it is aware of its responsibilities should it be required to step back into the roles that it is proposing to transfer to DERS.

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[19] Decision 2000-41, p. 21

ATCO also noted the Board's initiative regarding service quality issues as noted in a discussion paper, *Regulated Service Provider Service Quality and Reliability Issues*. ATCO submitted that any concerns with service quality can also be addressed in this forum.

ATCO noted that the primary focus of DERS is to seek to enhance the relationship that customers have with their utility provider. As indicated by DERS, its whole model fails if it cannot earn customer trust and encourage customers to not only switch to unregulated energy products but also to potentially cross-sell additional services and products from its affiliates.

With respect to the evidence provided by Ms Schilberg, ATCO stated that the evidence is confused regarding issues that are related to the Board's jurisdiction and the types of conditions that the Board is legally entitled to impose on any approval granted regarding the Application. ATCO questioned the familiarity that Ms Schilberg has with the Alberta legislation and her ability to determine what activities are or are not permitted by participants in the marketplace. ATCO submitted that it has not engaged in any activities that are inconsistent with what is permitted under the prevailing legislation.

With respect to the DERS affiliates in other jurisdictions, ATCO stated that it is important to note the steps that have been taken to ensure that any recurrence is avoided. DERS stated that it had learned from these mistakes and had taken steps to ensure that the Alberta marketplace will not be exposed to the same problems.

Views of the Board

The Board considers that one of the factors that the Board must determine in approving the transfer of a regulated business is whether the new entity can continue to provide safe and reliable service to customers. ATCO has noted that each of ATCO Gas, ATCO Electric and DERS will remain regulated entities and that the Board can address matters related to service quality through other forums. While this is true, the Board also would like to avoid the creation of service problems that may result from the transfer of one entity to another. The Board considers that experience in the Alberta market has indicated that there is additional customer confusion created by the separation of the wires or distribution service from the retail service. Customers can become frustrated when they contact the company that they expect to help them with a service problem and are directed to another entity. Again, however, the Board notes that the current regulations allow the distribution companies the ability to choose a separate entity as the RRT and DRT provider. The Board does consider that it is possible for this separation to work so that the effect on customers is minimized. The Board considers that it is imperative for the distribution company and the provider of RRT and DRT service to work closely together to identify issues and quickly provide solutions when problems occur. The Board considers that the continued operation of ATCO I-Tek to provide the call centre services should help in this regard.

The Board is satisfied that DERS has the ability to act as the provider of RRT and DRT service. The Board notes that DEML and its affiliates operate similar businesses in numerous other jurisdictions. The Board notes its concern with the problems that DEML affiliates have experienced with their marketing efforts in other jurisdictions. While the tactics used cause the Board concern, the problems have related to the equivalent of non-regulated services in Alberta.

The Board notes the comments from DEML that it will ensure that similar issues do not arise in the Alberta market.

The Board also notes that DEML has stated that its business model is dependent on providing good service in the regulated market in the hope that this would entice customers to take services from DEP. The Board considers that it is to the benefit of DEML to ensure that DERS provides an appropriate service level to its regulated customers. The Board considers that any concerns that DERS is providing a level of service that is too costly, can be addressed in the current and any future rate applications by DERS.

The Board further notes that DERS would be the provider of RRT and DRT services on behalf of ATCO Electric and ATCO Gas, respectively. Therefore the Board considers that ATCO has an ongoing commitment to ensure that the service provided by DERS is done in accordance with the provisions agreed upon by ATCO and DERS. The Board also notes that ATCO retains the ultimate responsibility under the legislation with respect to RRT and DRT services.

3.2.1 Quality of Service Measures

Views of the Intervenors

AUMA/CE

AUMA/CE noted that there are many services and Quality of Service targets that ATCO I-Tek is proposing to provide to DERS that ATCO Gas and ATCO Electric currently does not provide. AUMA/CE noted the PA Consulting Report and stated its concern that the higher standard of service that ATCO I-Tek will be providing to DERS will translate to higher customer costs. AUMA/CE submitted that the motivation for a higher standard of customer service than currently provided by ATCO is related to the DEML model of converting customers to non-regulated services. AUMA/CE noted the comments made by DEML that:

> …unregulated affiliates of regulated incumbent utilities tend to be well-placed to win customers who choose to switch, and we believe that by improving service and quality of service through Direct Energy Regulated the people over time will come to trust us and know us and over time will look at taking other products and services effectively and may consider taking unregulated product, gas and electricity, and maybe other products should we decide to enter in the future.[20]

AUMA/CE submitted that, if DERS wishes to provide enhanced service levels to benefit its unregulated affiliates, it should do so only at its shareholders' cost. AUMA/CE recommended that DERS should be required to conduct a customer service level survey to determine the appropriate level of service that the ATCO customers desire and at what cost. AUMA/CE further recommended that, until such a survey is completed, ATCO I-Tek should provide the same level of service that is currently being provided to ATCO unless the additional cost is borne by shareholders of DEML.

AUMA/CE submitted that penalties should be imposed on DERS if they do not meet certain service quality standards. AUMA/CE noted that in other jurisdictions where affiliates of DERS operate, many of the complaints relate to door-to-door sales. AUMA/CE noted the penalty matrix used in Texas concerning door-to-door sales and recommended that such a table of penalties should be imposed on DERS/DEML. AUMA/CE stated that this would motivate DERS/DEML to stop inappropriate door-to-door sales techniques.

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[20] AUMA/CE Argument, p. 12

Calgary

Calgary noted that the Board currently has a process underway to deal with quality of service measures. Calgary submitted that DEML should be required to be bound by the results of that process.

Consumer Group

The Consumer Group submitted that quality of service is an issue in these proceedings and that it is appropriate that they be taken into consideration in evaluating the merits of the transaction. The Consumer Group noted that there are several ways in which service quality may decline as a result of the transaction should ATCO or DERS allow their service to fall from prior levels. The Consumer Group argued that a decline from current service levels would constitute customer harm. The Consumer Group stated that the proposed Service Quality Plans should be considered as minimum levels of service and will not be sufficient to prevent declines from ATCO's existing performance levels.

The Consumer Group noted two changes in service to customers as a result of the proposed transfer. First, there will be fewer in-person offices. The Consumer Group noted that after a maximum 24-month transfer period, the 67 ATCO Gas and Electric offices will no longer be available to accept customer payments. After the transfer, payment locations will be limited to Edmonton, Calgary, Lethbridge, Red Deer and Grande Prairie. The Consumer Group stated that the absence of in-person offices has a worse consequence for customer enrollment since DERS will require verification of identity in person in some circumstances. The Consumer Group argued that the added difficulty that is created becomes a barrier to receiving regulated service.

Secondly, the Consumer Group noted the confusion caused by multiple call centres. The Consumer Group noted that, after the transaction, a customer will need to call the ATCO Electric number for an electric outage, the ATCO Gas emergency number for a gas emergency, and the retailer for the outstanding balance, billing questions, or a meter read question. The Consumer Group argued that this is an additional burden for customers to differentiate between these functions and to determine the correct numbers to call. Furthermore, a customer trying to contact the utility from the phone book may not be able to differentiate which Direct Energy entity provides their service. As a result of the confusion for the customer, there may be delays in ATCO learning of an outage, which will lead to longer outages.

The Consumer Group also argued that Gas Co-ops and Municipal Gas Utilities will have additional work and expense to deal with customers that incorrectly apply to switch suppliers. The Consumer Group noted the aggressive attempts by DEML to position itself in the unregulated retail market.

The Consumer Group noted the dominant position that DERS will have with respect to market share. DERS will provide regulated gas service to roughly 62% of Alberta's customers and regulated electric service to roughly 13 per cent. The Consumer Group noted that to the extent that regulated prices are increased, unregulated service can appear more attractive to customers. The Consumer Group stated that a rate increase for regulated service would therefore be in harmony with DEML's business plan to transfer customers to unregulated service. The Consumer Group submitted that rate increases in regulated rates are a likely outcome of the sale.

The Consumer Group noted that DEP will be charging to exit contracts when customers are obtaining unregulated services. The Consumer Group noted that currently if a customer leaves ATCO for any reason the risk of any stranded gas contracts is absorbed by the utility. DEP is proposing to place that risk on the customer. The Consumer Group speculated that these payments could add to the burden of customers in financial difficulty.

The Consumer Group noted that DEML would not provide information from its competitive marketer that would help parties understand the consequences of unregulated service. The Consumer Group argued that much of the information requested would have helped to confirm how DEML seeks to leverage its regulated customers into unregulated service, either by making regulated service expensive and difficult to obtain or by subsidizing unregulated service with costs to regulated customers.

The Consumer Group considered that the service quality provided by ATCO Gas and ATCO Electric should not be allowed to decline. Service quality on functions retained by ATCO should remain at levels at least as good as the best of the last three years. The Consumer Group noted the following targets (annual, unless otherwise specified) and recommended that these measures should be reported to the Board on a quarterly basis:

- Electric SAIFI (T&D) 1.65
- Electric CAIDI (T&D) 1.75
- Gas bill estimate accuracy rate: 84.6
- Gas emergency response: 20 minutes or less on a monthly basis
- Gas appointments missed: 2.4% or less on a monthly basis[21]
- Response to complaints: no more than 12% miss the service target for response
- Worker safety: frequency of medical injuries – maximum of 6.4

The Consumer Group also recommended that ATCO monitor and report to the Board on a monthly basis (unless otherwise noted) the following events:

- Number of complaints, by type
- Identification of the 5% worst performing electric circuits (based on a duration index) and results of an investigation if the same circuits repeat each year (annually)
- Number of customers without service for more than 24 hours
- Electric appointments missed

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[21] A penalty of $50 credited to the customer for each missed appointment could also be considered. This general approach has been adopted by regulators in the United Kingdom, as well as a number of other North American utilities (Pacificorp, Pacific Gas and Electric, Central Maine Power, Georgia Power, and several New York utilities among others).

- ATCO Gas and ATCO Electric Emergency call centre time to answer and percent abandoned calls.

The Consumer Group argued that over a five-year period, ATCO should be penalized by an amount equal to some or all of the gain on sale if the above noted service standards are not maintained.

The Consumer Group considered that DEML-RS should also report to the Board on a quarterly basis the following monthly performance measures

- Service Level, Inbound Calls
- Quality Score (telephone)
- Enrollments submitted
- Billing Usage Processed
- Energy charges calculated on scheduled charge cycle
- Statements sent within 1 day
- Service accounts not requiring adjustment
- Payments transferred to bank on same business day
- Payments posted to customer's account within 1 day

The Consumer Group also stated that any changes to the Critical Service Level Commitments that are part of the MS Agreement should require Board approval.

The Consumer Group noted that to maintain existing service options, DERS should be required to offer hot transfers at the call centre for all electric and gas issues indefinitely. The cost of the hot transfer service should not be paid by rate payers. Further, DEML should be required to investigate payment options so that customers have the same ability to make a variety of instantaneous payments as currently offered by ATCO.

HVAC

HVAC stated that quality of service measures must be designed to ensure that market confusion is minimized at all times. HVAC argued that, in the present circumstances, confusion arises given DEML's structure and customer confusion related to the roles of ATCO, DEML, DERS, DEP and other affiliates that may carry out business in the future under the ATCO or Direct Energy banner. HVAC submitted that it would be prudent for DEML to carry out objective surveys performed by independent third parties to ensure the business model used by DEML does not result in customer or marketplace confusion.

DEML

DEML noted that Schedule A of the MS Agreement defines the services to be provided by ATCO I-Tek for both the regulated retail functions of DERS and the unregulated retail function of DEP. The service levels are prescribed in Schedule B of that agreement. DEML stated that, based on the analysis by Mr. Stephens, a witness for Calgary, the service levels prescribed in the

MSA surpass are as good or better than those in the current ATCO I-Tek MS Agreement with ATCO Gas and ATCO Electric. DEML further noted that the service levels in the MS Agreement surpass the levels set in the Board's draft Regulated Services Provider, Service Quality and Reliability document.

DEML submitted that if the proposed transactions close and DERS assumes responsibility for the regulated retail functions, the current level of high quality service provided by ATCO will be maintained and, to the extent reasonable possible, improved upon through DEML's commitment to excellence in customer care and the experience and capabilities of ATCO I-Tek.

In response to the Consumer Group, DEML stated that the costs associated with the MS Agreement and customer care costs are included in the applied for revenue requirement in the DERS application for an RRT and DRT. In response to the Consumer Group concern regarding termination payments, DEML stated that matters regarding the rights and obligations of parties to competitive retail contracts are outside the Board's jurisdiction. Further, DEML stated that it would expect that the principle of contractual sanctity would be upheld. DEML questioned the Consumer Group's statements with respect to DEML's ability to eliminate regulated service. DEML stated that it is solely within the authority of the Alberta Government. Lastly, DEML stated that the Consumer Group's concerns regarding DEML's ability to build in costs for the regulated service to make it increasingly expensive can be addressed through DERS' applications for RRT and DRT.

Views of ATCO

ATCO noted the discrepancy between the arguments of some of the Intervenors with respect to the appropriate level of service regarding ATCO I-Tek. ATCO submitted that there is no evidence to support the assertion that service levels will diminish as a result of the proposed transfer.

With respect to the conditions proposed, ATCO argued that no justification for the imposition of conditions has been brought forward.

Views of the Board

As noted in the previous section, the Board is concerned that customers continue to receive safe and reliable service if the transfer application is approved. The Board considers that one means to address any lingering concerns is to impose Quality of Service Measures on either or both of ATCO and DERS. The Board acknowledges that its concern in this area is heightened by the experience with the transfer of the retail business from Aquila (then UtiliCorp) to EESAI. However, while problems arose in that transaction with respect to customers' service, it will not necessarily arise in this transaction. Nonetheless, the Board considers that it is desirable to make reasonable efforts to ensure that difficulties do not arise rather than attempt to deal with them after the fact.

There is an ongoing process that the Board has undertaken with respect to all providers of electric and gas distribution and regulated retail services. The Board notes that while this process is in the early stages, it is intended to address the monitoring of service levels and will include the ability to address problems with service quality should they arise. However, the Board considers that it also has the ability to impose specific conditions on ATCO and DERS as a condition of this transaction that would address specific issues that may arise as a result of the transaction. The Board notes however the difficulty in anticipating what, if any, service concerns may arise. The Board also notes the assurances of ATCO and DERS that they have the ability to complete the transaction with minimal negative effect on customers. The Board would like to exercise the greatest caution reasonable without causing any unnecessary expense or conditions on either ATCO or DERS.

The Board considers that it could best achieve an appropriate balance of these concerns by monitoring the activity with respect to customer service once the transaction is completed. In this manner, the Board should be able to react quickly to problem areas that may develop. The Board therefore directs ATCO to put arrangements in place that will provide the following information to the Board on a quarterly basis. This information shall be provided for three years following the close of the transaction. This monitoring will be done in addition to any other reporting that may be required as a result of the Board's other processes on Quality of Service Measures. However, the Board considers that, once the Board's Quality of Service Measures are implemented, either ATCO or DERS can request relief from any of the following measures if they are duplicated in the Board's Quality of Service Measures initiative. ATCO will be responsible to ensure that the appropriate reporting is received by the Board from ATCO Gas, ATCO Electric and DERS. ATCO shall not be required to provide DERS information directly to the Board if DERS elects to provide the required information directly to the Board for the stipulated period.

The following information shall be provided for each of ATCO Gas, ATCO Electric and DERS on a quarterly basis, commencing three months after the close of the transaction:

- Number of complaints, by type
- Number of calls to each call centre
- Number of customers without service for more than 24 hours
- ATCO Gas and ATCO Electric Emergency call centre time to answer and per cent of abandoned calls
- Percentage of bills requiring adjustments due to prior period errors, including meter reading errors
- Percentage of bills that do not include both distribution (and transmission, as applicable) charges and DRT or RRT charges
- Number of calls that DERS call centre refers to either ATCO Gas or ATCO Electric and vice versa

The Board will monitor the information provided and may choose to revise the required information and, if necessary, may undertake measures to address any problems that arise. ATCO and DERS may include any narrative with the reporting that they consider to be helpful or informative in understanding the data. The Board may seek clarification, as necessary.

3.3 Potential Impact on Competition

3.3.1 Co-Branding

To reduce the potential of customer confusion and concern, ATCO and DEML developed a customer transition approach that they proposed would provide a smooth, graduated transition experience for RRT/DSP customers. Key to this graduated bridging of customers from ATCO Electric and ATCO Gas to DERS regarding regulated services is the co-branding of customer RRT/DSP utility bills and envelopes with both the ATCO Electric or ATCO Gas and Direct Energy Regulated logos for a 24-month period.

ATCO stated that the co-branding of the RRT/DSP bill will provide customers with the familiarity of the ATCO name, as they grow more accustomed with DERS and the bridging of their regulated services to the new provider. Of equal importance, the co-branded RRT/DSP bill will provide further assurance that ATCO Gas and ATCO Electric will continue to serve Albertans as energy delivery companies and will continue to ensure the safe, reliable delivery of electricity and natural gas to their homes and businesses.

Views of the Intervenors

AUMA

AUMA submitted that while ATCO may have followed the letter of the regulation in respect of co-branding, it has not followed the spirit of the regulations to foster competition. AUMA noted the similarity of the names between Direct Energy Regulated Services, Direct Energy Unregulated Services, Direct Energy Partnership, Direct Energy Preferred, Direct Energy Essential Home Services, Direct Energy Business Services, Direct Energy Marketing Limited and Direct Energy Marketing Inc. However AUMA stated that it did not support a requirement for DEML to change names to differentiate its regulated from its unregulated services any more than it would support a requirement for ATCO to change the names of its regulated and unregulated affiliates to reduce the risk of confusion.

AUMA recommended that DERS be directed to provide information on each bill stuffer informing customers that DERS is a regulated and separate entity from any unregulated business. DERS should also be directed to include a reference to the government website for further information on unregulated retailers on its bills and envelopes. AUMA suggested that the billing envelope, postage and service are not only regulated property but also contain regulated rights or privileges.

AUMA also noted its agreement with Calgary and other Intervenors that ATCO should allow other retailers equal access to space on its bills and to use of the envelopes for bill inserts. AUMA submitted that the cost of this access should be the same basis for all retailers.

Calgary

Calgary stated that linking the names of ATCO and DEML on a customer's bill during the period of co-branding contravenes the spirit and intent of the *Code of Conduct Regulations*. Calgary noted that over the course of the two years of co-branding, customers will become familiar with the 'Direct Energy' trade name and the lightning bolt logo. Calgary further noted that when DERS provides retail services the trade name 'Direct Energy' will be in large font and the lightning bolt will also be used; the only difference will be that Preferred appears in small font instead of Regulated Services. Calgary argued that, in this context, co-branding is ATCO providing use of the billing envelopes and bills to DEP as an unregulated retailer in every written communication with customers for two years.

Calgary stated that the *Gas Code Regulation* does not expressly permit the co-branding proposed by ATCO and DEML. Calgary noted that, to comply with section 17 of the *Gas Code Regulation*, the communication must conspicuously state that customers are free to choose other retailers. Calgary argued that either all retailers must be listed on the bill to create a level playing field or customers should be referred to a source where such information can be obtained.

Calgary submitted that the proposed co-branding also breaches section 18 of the *Gas Code Regulation* which prohibits a distributor or default supply provider from giving information about retail gas services in a manner that encourages a customer to contact one retailer in preference to others. Calgary argued that linking the ATCO brand to DEML will be an encouragement to select DEML's retail business.

Calgary considered that all parties in an emerging retail market should have the same opportunity as DERS in associating its name with ATCO. If the objective of co-branding was to avoid confusion, then ATCO should have no issue with allowing all retailers to co-brand. Calgary argued that co-branding was an intricate part of the arrangement to transfer customer loyalties to DERS. Such an arrangement impedes competition and should be dismantled by the Board.

Calgary recommended that co-branding be disallowed or alternatively that all retailers be allowed to co-brand with ATCO. Calgary suggested that, if co-branding is allowed for all retailers, the bills and envelopes generated by those retailers would also contain the ATCO logo.

Consumer Group

The Consumer Group submitted that using the names of both ATCO and DERS on the billing envelope and the bill would indirectly confer a preferential advantage to DEP. The Consumer Group also suggested that this would indicate that ATCO is favoring one retailer. The Consumer Group proposed that changing the name of the unregulated business would remedy this violation.

The Consumer Group argued that the record established that customer harm and misperceptions would ensue from the use of similar and misleading names with co-branding from ATCO. The Consumer Group submitted that the Board is entitled to require mitigating measures as necessary.

HVAC

HVAC submitted that co-branding will be advantageous to DEML particularly given the prospect for DEP branded materials to be included in the co-branded ATCO/DERS billing envelope. HVAC suggested that this would link ATCO with DEML and the unregulated services of DEML in the minds of customers.

Further, HVAC submitted that the similarity of the DEML brands and names would promote the linkage. HVAC considered that DERS and DEP have identical brands except for the small font and reference to "regulated services" and "preferred." HVAC argued that the default supply provider should operate under a separate brand from the unregulated retailer.

DEML

DEML noted that CE did not support the AUMA argument with respect to co-branding. DEML considered that CE did not agree with the AUMA that the billing envelope, postage and service are regulated property and also contain "regulated rights or privileges." DEML stated that CE has the interests of EPCOR at heart, and does not agree that other retailers should have equal access to space on bills and be permitted to use billing envelopes for bill inserts.

DEML noted that co-branding would only be done between ATCO and DERS. DEML stated that there would be no co-branding between DEML's unregulated affiliates and ATCO. Further, the co-branding will only occur for a set period of time after the transition.

Views of ATCO

ATCO noted that co-branding was being done in order to assist in customer education and transition and reduce the level of confusion that customers may otherwise experience. ATCO submitted that co-branding would reduce calls to the call centre and would reassure customers that ATCO Electric and ATCO Gas will remain as the regulated distribution service providers.

ATCO considered that the *Code of Conduct Regulations* explicitly address this matter and deal with what the parties can and cannot do. No evidence has been placed before the Board which would demonstrate that ATCO or DERS have acted in a manner contrary to the requirements of the prevailing legislation.

ATCO stated that the legislation establishes the rules by which all parties must abide and ATCO has operated in a manner entirely consistent with these rules. ATCO argued that it would be inappropriate for the Board to seek to enforce standards different from those enacted by the legislation. ATCO submitted that there is no issue before the Board regarding co-branding, which requires any action by the Board.

Views of the Board

Section 7 of the *Code of Conduct Regulation*, AR 160/2003 under the EUA (*Electric Code Regulation)* deals with advertising and states the following:

> 7 If the name and logo of an owner and its affiliated retailer do not clearly indicate that they are separate entities, the affiliated retailer must, in any internet text or written material published or sent that markets retail electricity services, include conspicuous statements to the following effect:
>
> (a) that customers are not required to acquire electricity or other goods or services from the affiliated retailer in order to receive regulated electricity services from the owner;
>
> (b) the place where customers may obtain the current list of licensed retailers maintained in accordance with the *Fair Trading Act* and the regulations under that Act.

The Board notes that the provisions of section 7 of the *Gas Code Regulation* are identical to the above after conforming changes for terminology. The proposed co-branding will involve the logos of ATCO Electric or ATCO Gas and DERS. The Board also notes DEML's commitment that any future co-branding would only be done between ATCO and DERS and that there would be no co-branding between DEML's unregulated affiliates and ATCO. Additionally the *Code of*

Conduct Regulations place limitations on the co-branding that can occur between DERS and its unregulated affiliates.

The Board notes ATCO's position that the co-branding would be carried out to educate and reduce confusion among customers during the transition to DERS providing the regulated retail functions. The Board considers co-branding to be a reasonable means of transitioning customers to the idea of a separate regulated distribution and retail function and will aid customers through this transition.

The Board considers that reasonable measures designed to reduce confusion to be positive means of completing the transition to a deregulated utility industry. The Board agrees with Intervenors that some customers could interpret the co-branding as a recommendation by ATCO to services offered by Direct Energy whether they are the regulated or the unregulated entities. However, the Board considers that, on balance, there is more to be gained by minimizing customer confusion through the use of co-branding than by attempting to prevent any potential advantage given to DEP or other non-regulated affiliates of DERS. Therefore, the Board approves the co-branding proposal as set out in the Application.

3.3.2 Access to Billing Envelope

Some Intervenors recommended that, if the billing envelope is to be used to advertise competitive products, it should be available to all retailers, and not paid for by ratepayers.

Views of the Intervenors

Calgary

Calgary noted its concern that DEML would have control over the billing envelope. DERS has acknowledged that it will allow DEP unlimited access to the billing envelope. Calgary stated that other retailers will not have the same opportunity to advertise their fixed price contracts via bill inserts. Calgary noted DEML's comments that it will determine whether competitors can advertise in the billing envelope on a case-by-case basis. Calgary noted that the criteria for allowing or denying access will not be known to competitors.

Calgary recommend that DEML should be required to allow full access to the billing envelope to ensure a level playing field for retailers. Calgary stated that, as a less satisfactory alternative, guidelines on DERS' discretion to allow access to the billing envelope should be made public in advance of DERS carrying on business.

Consumer Group

The Consumer Group submitted that use of the billing envelope should not give a preference to one retailer over another. The Consumer Group submitted that permitting one retailer to access the billing envelope without giving other retailers the same access on the same terms is giving preferential treatment to an affiliated retailer. The Consumer Group noted that this violates the *Code of Conduct Regulations*.

The Consumer Group argued that either the billing envelope should be available to no retailers, or it should be available to all retailers under the same conditions. The Consumer Group also argued that, if the billing envelope is to be used to advertise competitive products (energy or other products), it should be available to all competitors, and postage and printing costs should not be paid for by ratepayers.

HVAC

HVAC disagreed with DEML that section 17 of the *Gas Code Regulation* grants it exclusive and absolute control over the billing envelope. HVAC noted that the *Gas Code Regulation* only states that the default supply provider may allow retailers access to the billing envelope. HVAC stated that this contrasts to section 28.3(1) of the GUA which delegates the authority to the Board to make and enforce rules regarding service quality standards related to billing and billing services provided to customers. Therefore, HVAC submitted that it is the Board, not the default supply provider who ultimately has control over ensuring the content of the bill and access to the envelope does not impede competition and detrimentally affect customer service.

HVAC noted that DERS intended to use the utility relationship to cross-sell other products through the use of the billing envelope. Such a practice would create a competitive advantage for DEML, which has the potential to damage the development of a competitive retail market in Alberta. HVAC recommended that billing should be carried out in a fair manner and that any competitive advantage gained by access to the billing envelope is not leveraged by DEML.

Views of ATCO

ATCO considered that similar to the argument in co-branding, the restrictions that parties wish to impose with respect to access to the billing envelope are in direct conflict with the explicit requirements of the *Code of Conduct Regulations*. ATCO stated that access to the billing envelope is an exception in the Code of Conduct. ATCO argued that when a matter has been addressed by the legislation, it is not for the Board to attempt to impose a different standard. ATCO noted the statements of DERS that it will comply with the applicable Code of Conduct requirements and relevant rules and regulations.

Views of the Board

The Board considers that section 17(1) of the *Electric Code Regulation*, and the equivalent *Gas Code Regulation* apply with respect to issues regarding access to the billing envelope. The *Electric Code Regulation* states as follows:

> **17(1)** When an owner or regulated rate provider allows a retailer to access the owners or regulated rate providers written communication, including billing envelopes, with customers for sales or marketing purposes the communication by the retailer must conspicuously
>
> (a) state that customers are free to choose other retailers, and
>
> (b) refer the customer to a source where the customer may obtain the current list of licensed retailers maintained in accordance with the *Fair Trading Act* and the regulations under that Act.

The Board considers that section 17(1) gives DERS the ability to decide who has access to the billing envelope. However, the Board agrees with those parties who submitted that this section of the *Electric Code Regulation*, if considered in isolation, could provide a competitive advantage to affiliates of RRT providers if applied preferentially.

Accordingly, the Board agrees with Calgary that it would be appropriate for DERS to develop a clear policy to be applied equally by DERS to all parties wishing to gain access to the billing envelope, setting out the requirements that are necessary to gain access to the billing envelope and the manner in which the price for this access will be determined.

The Board notes that it only has authority with respect to the *Gas Code Regulation* and that the MSA has the authority with respect to the *Electric Code Regulation*. Therefore the Board considers that it can only make a direction regarding the Gas Code Regulation. However, the Board considers that it would be appropriate for DERS to provide a similar publicly available plan with respect to electric bill envelopes.

Therefore the Board directs DERS to prepare a policy on how it will assess who has access to the billing envelope for the provision of natural gas service and the price that it will charge for this access. DERS must provide this policy to the Board and registered Intervenors within 30 days of the close of the transaction with ATCO.

3.3.3 Agreement with ATCO I-Tek

DERS has entered into an exclusive agreement with ATCO I-Tek, an affiliate of ATCO. ATCO I-Tek will be providing the customer services and billing functions to DERS, as it currently does for ATCO Gas and ATCO Electric.

Views of the Intervenors

AUMA

AUMA/CE noted the following clause from the ATCO I-Tek MS Agreement contract:

> The Supplier and its Affiliates shall not, unless otherwise agreed in writing by the parties, during the Term, provide customer care or billing services that are substantially the same as the Services provided hereunder, to any person in connection with that person's retail gas or electricity commodity marketing business in Alberta. Notwithstanding the foregoing, the Supplier may continue to provide such services, including customer care or billing services, to the City of Red Deer and otherwise fulfill its obligations to the City of Red Deer.[22]

AUMA/CE further noted comments from a press release from Centrica plc of December 10, 2002 which stated, "ATCO I-Tek will not be allowed to provide billing or care services to any of Direct Energy's competitors in Alberta."

AUMA/CE noted that when ATCO filed the Application there were two retailers providing service to residential customers: EPCOR and ENMAX. EPCOR subsequently announced that it would no longer be providing competitive retail services to residential, farm and small commercial customers. Therefore with DEP's potential entrance into the market, there will be two retailers. AUMA/CE submitted that any attempt by ATCO or DEML to limit entry to further retail competition is incongruent with their alignment with government policy respecting increasing retail competition in Alberta.

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[22] Clause 2.2(d) at pp. 12-13 of the ATCO I-Tek MS Agreement contact

AUMA/CE submitted that, at a minimum, the ATCO I-Tek MS Agreement between ATCO I-Tek and DEML should be modified to allow ATCO I-Tek to provide, without restriction, retail billing and customer care services to other potential retailers. AUMA/CE submitted that removing Clause 2.2(d) from the agreement could achieve this. Alternatively, and as a second choice, the words "consent to not be unreasonably withheld" can be inserted after the word "parties". AUMA/CE submitted that these changes would ensure that the public interest will be protected given the impeded development of the competitive retail market.

Calgary

Calgary also noted the agreement between ATCO I-Tek and DEML that stipulates that ATCO I-Tek is prohibited from providing billing or customer care services to any of DEML's competitors in Alberta for 10 years (the length of the agreement). Calgary stated that the exclusivity clause is purely for the benefit of DEML's unregulated retail business and therefore any premium paid for the exclusivity should not be included as part of the revenue requirement for DERS. Calgary submitted that DEML's requirement for ATCO I-Tek exclusivity constitutes a restraint of trade and is inherently anti-competitive.

Calgary further submitted that the ATCO I-Tek exclusivity arrangement is contrary to the Alberta government's objective to create a robust competitive market for retail gas services as it erects barriers to new market entrants.

Calgary noted that section 2(2) of the *Natural Gas Billing Regulation* allows for a retailer or default supply provider to authorize a gas distributor to bill customers under the gas distributor's gas distribution tariff. Calgary argued that, as a result of the ATCO I-Tek exclusivity clause, this option is no longer available to retailers. Calgary submitted that the exclusivity arrangement with ATCO I-Tek contravenes the *Natural Gas Billing Regulation* and is therefore clearly not in the public interest.

HVAC

HVAC stated that it was not opposed in principle to DEML contracting with ATCO I-Tek as part of the overall transaction in order to acquire billing and customer care services, assuming that DEML did so at fair market value and concerns over actual or potential cross-subsidization are addressed. HVAC stated that the concerns with the ATCO I-Tek Agreement arise because of the specific terms of the agreement such as exclusive control and incentives for cross selling.

DEML

DEML disagreed with Calgary that exclusivity under the MS Agreement contravenes the *Natural Gas Billing Regulation*. DEML stated that the potential arrangement permitted by the Natural Gas Billing Regulation is subject to the consent of the gas distributor and is an exception to the provision that requires the default supply provider to bill a customer. DEML noted that ATCO Gas is not in a position to provide such a service to DEML/DERS as it has outsourced this function to ATCO I-Tek. DEML/DERS has elected to make its own arrangements directly with ATCO I-Tek

Views of ATCO

ATCO noted that there were a number of questions regarding the agreement reached between ATCO I-TEK and DE. ATCO confirmed that this agreement was negotiated completely separately and that it had no bearing on the transfer arrangements.

The "exclusive" nature of the ATCO I-TEK contract was also probed, and ATCO noted that it was clear from the record that customer care services were competitively available in the marketplace from other entities should the need for such services ever arise. ATCO submitted that there is no evidence that the arrangement between ATCO I-Tek and DERS has or will impact the ability of any player to enter the Alberta marketplace. ATCO noted that other participants in the marketplace have gotten by without the service of ATCO I-Tek.

ATCO submitted that the ATCO I-TEK Agreement with DERS will have no impact on any matters related to the Application. ATCO argued that the appropriate context to consider the ATCO I-Tek Agreement is within the DERS Tariff proceeding. ATCO noted that DERS has outsourced certain customer care and billing functions to ATCO I-Tek and must demonstrate that the costs of doing so are appropriate in the context of their tariff applications.

Views of the Board

Intervenors have argued that the exclusivity included in the ATCO I-Tek agreement will impose an impediment on the ability of new competitors to enter the unregulated retail market.

The Board agrees with ATCO that the appropriate context in which to consider the costs of the ATCO I-Tek Agreement is within the DERS tariff proceeding. However, the Board considers that this Application provides the appropriate context to consider any implications that the ATCO I-Tek Agreement may have on competition in the electric and gas retail markets in general. Although the Board has no jurisdiction over the unregulated retail markets, the Board considers that it does have an onus to consider, as appropriate, the implications that Board decisions may have on the competitive markets.

In this instance while the Board considers that the exclusivity of the ATCO I-Tek agreement may provide some advantage to DEP, the Board is not convinced that the ATCO I-Tek agreement will prevent new competitors from entering the market. The Board notes that both ENMAX and EPCOR operate as retailers without using the services of ATCO I-Tek. The Board considers that there are likely other viable sources of billing and customer care services that could be used from outside Alberta. Therefore the Board does not consider that the ATCO I-Tek agreement, or the exclusivity contained in the agreement, poses an undue impediment to competition.

3.3.4 Structure and Market Power

Views of the Intervenors

Calgary

Calgary noted that ATCO Gas has an 80% share of the regulated gas market in Alberta. Calgary suggested that the proposed transaction would transfer that market power to DEP, an unregulated retailer. Calgary stated its concern that the current structure of DEML will lead to an unregulated monopoly. Calgary recommended that the two divisions of DEML need to be completely separate so that customers do not even realize that the regulated and unregulated companies are jointly held. Calgary stated that section 7 of the *Gas Code Regulation* requires that, if a name and logo of a default supply provider and its affiliate do not clearly indicate that they are separate entities, the affiliate retailer must take steps to ensure that customers understand that the default supply provider and its affiliate are separate entities. Calgary recommended that this provision should be interpreted to ensure meaningful compliance so that DEP does not benefit at the expense of other retailers, from its relationship with DERS.

Calgary stated that the ATCO Non-Competition agreement and the Residual Rights agreement are examples of restraint on trade. Calgary stated that it was not appropriate for ATCO to commit to not entering the retail market for the next ten years. Furthermore, Calgary noted that in the Residual Rights Agreement, ATCO assigned all future unregulated rights to DEML. Calgary submitted that the Board has a duty to protect the public interest and to ensure that the transaction does not impede the development of a competitive market for natural gas. Calgary therefore recommended that, if the transaction is approved, it be approved with the condition that the parties renegotiate the ATCO I-Tek contract to remove the exclusivity clause.

Consumer Group

The Consumer Group argued that the transaction will create enormous market power for one retailer, DEML, especially in the gas retail market. The Consumer Group stated that the existence of market power is contrary to the development of competition.

The Consumer Group noted that Part 3 of the *Code of Conduct Regulations* is intended to prevent unfair competitive advantage for the affiliated retailer at the expense of other retailers. The Consumer Group argued that, since DERS and DEP are not separate entities and they share the same employees, it results in an unnecessarily complex arrangement for monitoring *Code of Conduct Regulation* compliance. The Consumer Group stated its concerns with respect to cost allocation between DERS and DEP. The Consumer Group recommended that, if the transaction is approved, DERS and DEP should be separately incorporated as stand-alone retailers with different offices, employees, call centres and advertising programs. Further, any approval of the transaction must be conditioned on the basis that any retailer be allowed access to I-Tek on the same terms as DEP.

The Consumer Group also noted the examples of questionable marketing practices employed by Direct Energy and affiliates in other jurisdictions. The Consumer Group argued that the manner in which DEML proposes to provide regulated services alongside competitive services has the effect of providing an incentive to DEML for employing questionable tactics. The existence of marketing power will allow DERS to make life so miserable for regulated customers that they may have little choice but to take unregulated service.

The Consumer Group submitted that DERS can use its market power to build in costs for the regulated services such that it can become increasingly expensive for the regulated customer to remain on that service, despite taking no profit other than fees for guarantees. The Consumer Group stated that the cost advantages that DERS has given DEP through its tendency to load costs on the regulated customer will tend to ensure the profitability of the DEP. The Consumer Group submitted that the Application will not aid competition but will stifle it as DEML takes advantage of the 'winning conditions' it has built into this transaction for itself.

HVAC

HVAC stated that the movement to retail deregulation was intended to create and foster a fair and competitive marketplace. HVAC argued it is necessary to consider the market signals being sent to those that are or may be interested in competing within this new retail marketplace, including the market for both energy and related energy services. HVAC submitted that by allowing DEML to manage and control the affairs of the default supply provider and at the same time be a retailer with the sole purpose of migrating and cross-selling regulated service customers, there is the potential to create a significant barrier to anyone else seeking entry into the marketplace. HVAC questioned why any potential third party would seek to enter the marketplace when one of the only two market competitors has ownership of the default supply provider, and also controls, manages and directs its affairs. HVAC submitted that it is unlikely that other competitors will enter the market if the structural problems with DEML are not addressed.

HVAC noted that ATCO has agreed not to compete in any way with DEML and is obliged to convey exclusively to DEML any future rights it may have in Alberta concerning the unregulated function.

HVAC stated that, to the extent that there will be customer education or other information campaigns undertaken by ATCO and DEML in a manner which recognizes and promotes DEML as the regulated energy retailer, this will have the effect of positioning DEML in the minds of customers as a preferred or selected competitive energy and related energy services provider and, in the minds of some customers, a provider that is subject to regulatory oversight by the Board.

DEML

DEML submitted that the addition of DEP would represent a significant positive development for the competitive residential and small commercial retail market in Alberta, particularly with the recent announcement by EPCOR that it will exit the competitive mass retail market. DEML noted that without the entry of DEP, residential and small commercial customers would be limited to choosing between the regulated retail service provider and ENMAX. DEML submitted that such an outcome would be contrary to the Alberta Government's express desire to achieve greater customer choice in the retail markets.

In response to Calgary, DEML submitted that the Board has no role in overseeing details of how competition will unfold in the unregulated retail markets. DEML stated that details concerning the ultimate market share of competitive retailers, co-branding, the control of the billing envelope, the MS Agreement exclusivity and the ATCO Non-Competition Agreement are matters outside of the jurisdiction of the Board. Although DEML acknowledged that the Board does examine the impact of these matters on competition as part of its No Harm Test, DEML submitted that the scope of that review is narrow and should be only an assessment as to whether a transaction will likely enhance competition through the entry of one or more competitive retailers. DEML argued that how the unregulated competitive market works is not subject to the regulatory oversight of the EUB.

DEML noted the recent legislative changes and argued that DERS and its affiliate, DEP, should be allowed to operate their respective businesses in accordance with the law in place as the government saw fit to enact.

DEML suggested that Calgary argued in support of the Board overreaching its jurisdiction in several matters. DEML stated that the *Code of Conduct Regulations* permit the proposed structure for DEML and DEP. DEML noted that neither ENMAX nor EPCOR are structured in the fashion suggested by Calgary's consultant. Additionally, DEML argued that Calgary's recommendation with respect to co-branding is a matter beyond the Board's jurisdiction as there is nothing in the legislation that would prohibit the co-branding proposed by ATCO and DEML/DERS. Also, with respect to the billing envelope, DEML stated that it would comply with the provisions of its compliance plans as approved by the Board and the MSA and with all of the requirements of the *Code of Conduct Regulations*.

Views of ATCO

In response to Calgary, ATCO noted that the percent of the market to be served by DERS is the same share currently being served by ATCO. ATCO also noted that none of the market share is being transferred to the unregulated entity, DEP. ATCO noted that DEP has nothing more than an opportunity to persuade customers to convert to any unregulated offerings they may make. ATCO noted that in order to persuade customers to take service from DEP, customers will have to be convinced that they are getting a better deal.

ATCO also cautioned against the Board assuming 'imputed' powers as Calgary suggested. ATCO argued that what is being urged upon the Board is an attempt to regulate what are clearly unregulated activities.

ATCO noted the argument of HVAC regarding entities involved in both the role of default supply provider and affiliated unregulated retailers. ATCO noted that both EPCOR and ENMAX have been involved in both roles for years.

Views of the Board

Intervenors suggested that the proposed transaction will have a negative effect on competition in the retail markets due to: (1) the market dominance of DERS, particularly in gas; (2) the non-competition agreement between DEML and ATCO, and other agreements like the ATCO I-Tek Agreement that grants DEML exclusivity with respect to ATCO I-Tek services; (3) issues regarding the marketing practices of DEML affiliates in other jurisdictions; and (4) the structure chosen by DEML to organize the businesses of DERS and DEP, which could lead to confusion by customers in distinguishing between the regulated and unregulated entity.

The Board notes that the primary responsibility to review anti-competitive behaviour falls to the Federal Competition Bureau, and the Board understands that body has reviewed the transaction. However, the Board considers that while it does not have a direct role in the unregulated market, it has a public interest responsibility in reviewing sale applications such as this one, to ensure that, as a result of the transaction, a pronounced market imbalance is not created. In this instance, the Board notes that most parties did not consider that DEML would have market power in the electric retail business. With respect to the gas retail market, the Board notes that, prior to the proposed sale, ATCO has the same portion of the regulated retail market in gas that DERS would have after the sale. While ATCO never entered the unregulated retail market, there were no prohibitions on them doing so, just as ENMAX and EPCOR have done. Therefore the Board does not consider that market concentration on its own creates a market impediment. The Board also notes that while DEML may be successful in switching customers to DEP from DERS, there is no certainty that this will happen.

Further, the Board considers that the non-competition agreement between ATCO and DEML would only be a factor if ATCO was or had ever been in the unregulated retail market or had previously expressed an intention of entering it. ATCO has always maintained that it had no intention of entering this portion of the business. Therefore, the Board considers that these agreements do little more than maintain the status quo. The Board has dealt with the ATCO I-Tek Agreement and its affect on competition in an earlier section.

Respecting the marketing practices of DEML affiliates in other jurisdictions, while the record of marketing improprieties raises some concern with the Board, this is clearly a matter that is outside the Board's jurisdiction. The questionable marketing practices concerned the equivalent to the unregulated functions in Alberta. While the Board hopes that DEML's statements that they will be more circumspect in their marketing activities in Alberta will be true, the Board does not consider that it should factor this into its consideration of impacts on competition in this Decision.

Lastly, the Board notes that the matter of the corporate structure of DEML is dealt with in a subsequent section.

Therefore, taking all of these factors into account, the Board finds that the proposed transaction will not, on its own, have an adverse impact on competition.

3.4 Balance of Potential Positive and Negative Impacts

Views of the Intervenors

AUMA/CE

AUMA/CE submitted that the obvious negative impacts of the transaction are the significant additional costs that DERS is charging for the provision of the exact same service that ATCO provided previously. AUMA/CE stated that further negative impacts include customer confusion between the names Direct Energy Regulated Services, Direct Energy Preferred, Direct Energy Marketing Ltd., Direct Energy Business Services, Direct Energy Essential Home Services, and other Direct Energy affiliates. AUMA/CE also stated that there is the potential for inappropriate and unlawful retailer conduct in light of some of the history of DEML and other affiliated Centrica plc companies.

AUMA/CE noted that the positive impacts include the introduction of a new retailer that appears willing and anxious to enter the Alberta market. The unknowns are whether this retailer, who has no regulated experience in Canada and limited experience in the United States, can provide adequate service in a regulated environment. AUMA/CE submitted that its proposals, including a holdback, penalty provisions, changes to the ATCO I-Tek MSA and other recommendations, strike a reasonable balance between the positive and negative impacts resulting in no adverse impact to customers.

Calgary

Calgary noted that the Alberta Government has already weighed the increased costs in the short term against the potential long term benefits of competition and has determined that these short term costs are in the public interest. However, Calgary argued that what is in dispute is the level of short terms costs envisaged by the Alberta Government. Calgary submitted that it was not

$47.4 million per year. Calgary submitted that the benefits of competition cannot be used to justify the costs of the sale.

Calgary noted that ATCO has not provided a quantitative analysis of the benefits it claims will result from the transaction. Calgary stated that the costs of the transaction can and have been quantified. Calgary submitted that restructuring should result in value to ratepayers, not increased costs year after year.

Consumer Group

The Consumer Group argued that, from the customer perspective, the potential positive impacts are outweighed by the significant negative impacts. The Consumer Group stated that, as seen from the Unbundling Application by ATCO Gas, the reduction in ATCO costs from the removal of the retail function is no where comparable to the increase in costs for DERS to assume the retail function. The Consumer Group submitted that customers will suffer a net harm.

The Consumer Group submitted that the negative impacts will outweigh the positive impacts. The Consumer Group recommended that, to ensure no harm to customers, the sale transfer should not proceed. In the event that the transfer is approved, the Consumer Group recommended that the minimum conditions required are that the sale proceeds should not go directly to ATCO but should instead be distributed to customers as received. The Consumer Group stated that this would partially mitigate, if not eliminate, customer harm from the sale. The Consumer Group offered that another potential option would be the creation of a reserve account that the sale proceeds would be paid into, with the proceeds only to be dispensed when and if alleged future customer benefits are realized.

The Consumer Group argued that the customer service harm that will result from this sale is far more egregious than the Board has faced in other cases. The Consumer Group recommended that the types and extent of harm and the size of the market share that will be acquired by DEML make this a transaction that should be rejected.

HVAC

HVAC submitted that the harm/no harm inquiry indicates that there is a greater potential for negative than positive impacts arising from the proposed transaction. HVAC noted that the negative financial impacts to the public arise in large measure due to the significant and unsubstantiated charges associated with the ATCO I-Tek Agreement. Additionally HVAC stated that service quality is potentially negatively impacted given the structure to be used by DEML and the intent to leverage the ATCO utility customer relationship in order to cause the greatest possible migration and cross-selling of customers as quickly as possible. DEML's intention to participate in both the regulated and unregulated market segments using what most would consider identical brands, but for a minor and inconsequential change of words, will most certainly cause market confusion. HVAC submitted that this promotes DEML's self interest but is detrimental to customer service and hinders the development of a fair and competitive marketplace.

HVAC acknowledged the desirability of new entrants to the competitive market but argued that the potential overall impact upon competition is significantly negative. HVAC submitted that the acquisition of market dominance and market power based to a significant degree on customers' confusion will be the effect of the transaction as proposed absent appropriate conditions.

DEML

DEML submitted that there are no negative impacts that would arise as a result of the proposed transactions closing and DERS assuming the responsibilities to provide regulated retailer services pursuant to an RRT and DRT. DEML stated that there will be continuity of safe and reliable service, service levels for customer care and billing will be as good as or better than those currently provided for in the MS Agreement between ATCO I-Tek and ATCO Gas and Electric, and competition in the unregulated retail energy markets will be enhanced substantially. DEML stated that increases to the total delivered cost of regulated electricity and gas supply arise not because of the proposed transaction, but as a direct result of the Government's recent enactment of legislation that is intended to enhance competition in the retail energy markets through the separation of the distribution and regulated retail functions and by the creation of a level playing field. DEML submitted that if this transaction is not approved and DEML does not enter the market, the same or substantially similar costs increases will be experienced by customers though a separation by ATCO of its retail function from its distribution function.

Views of ATCO

ATCO submitted that no legitimate basis has been presented that warrants a denial or conditioning of the subject transfers to DERS, which are being requested pursuant to the governing legislation and are wholly consistent with the applicable Government policy.

ATCO stated that when DERS' future rates are compared to what ATCO Electric's and ATCO Gas' costs would be, the costs in either scenario are very similar. ATCO submitted that the "costs" that result from the proposed transaction (versus those attributable to restructuring and customer choice) are small, if they exist at all or could even be quantified; and are certainly significantly outweighed by the benefits derived from the implementation of true customer choice.

ATCO stated that the separation of retail and distribution functions and implementation of customer choice is the final step in the Government vision of a competitive market for electricity and natural gas. ATCO submitted that Government policy supports a vibrant and competitive marketplace. ATCO also submitted that all Alberta customers will benefit because of the competition introduced by DEP entering the market.

Views of the Board

The Board has assessed each of the potential elements of harm in the above sections. The Board notes that, with respect to these types of applications, the potential benefits are generally intangible and harder to quantify. The Board notes that one persuasive factor in any sale is that a company that wants to be in the business is replacing one who wishes to exit the business. Additionally the Board notes that the introduction of DEML into the Alberta marketplace will introduce a new competitor into the unregulated retail market.

The Board considers, that on balance, the potential harms identified with respect to the sale can, in the case of financial harms, be addressed in the DERS and other rate applications, and in the case of non-financial harms, can be addressed through Board directions or are not significant enough to warrant the denial of the Application.

Therefore the Board finds that the application by ATCO to transfer the retail business of ATCO Electric and ATCO Gas North and ATCO Gas South to DEML is approved subject to any conditions noted in this Decision.

In conjunction with this approval, the Board directs DERS to file, with the Board, within six months of the close of the sale, a report indicating that any account balances transferred from ATCO to DERS have transferred so that the closing balance of ATCO equals the opening balance of DERS. This report should be verified by an auditor as to its accuracy. The report should include both energy and non-energy deferral accounts that are transferred, and any customer related deposits.

Further, the Board directs ATCO to notify the Board of:

- the closing date for the transaction, when the date is known
- the date that DERS will become the provider of the DRT and RRT services; and
- the date that DEP begins operations.

Additionally, the Board approves the appointment of DERS as the provider of the electric RRT on behalf of ATCO Electric and the provider of the gas Default Rate Tariff on behalf of ATCO Gas North and ATCO Gas South.

3.5 Code of Conduct Issues

Views of the Intervenors

AUMA/CE

AUMA/CE noted that DEML would be opposed to filing a Code of Conduct as a condition of approval. DEML also indicated that it would not file the Compliance Plans respecting compliance with the new *Code of Conduct Regulations* until sometime after the transaction was approved. AUMA/CE submit this should be a condition of the approval.

Calgary

Calgary submitted that the compliance plans for DERS and DEP must be filed, reviewed and approved before the proposed transfer of the retail business can take place. Calgary recommended that the review of the DERS compliance plan should be done by way of a public process with input from intervenors. Calgary stated that this would help to ensure that DEP is not given an unfair market advantage. Calgary submitted that, if the compliance plans are deficient, DEP could become an unregulated monopoly.

Consumer Group

The Consumer Group submitted that ATCO and DEML may have already violated the spirit as well as the letter of the Codes of Conduct. The Consumer Group provided the following examples:

1. Billing Insert, January 2003
   The Consumer Group submitted that ATCO's billing insert of January 2003 was a violation of the code of conduct. The Consumer Group argued that the billing insert cobranded ATCO with Direct Energy; indicated a preference for DEP by referring to the

DEP website; and indicated support for DEML's unregulated business by promoting several unregulated functions.

2. ATCO Gas August Bill Insert
   The Consumer Group noted that the August ATCO bill insert advertised air miles for registering with DEP. The Consumer Group argued that this violated sections 18, 19 and 23 of the *Gas Code Regulation* because ATCO gave preferential treatment to its affiliated retailer and provided advertising at less than fair market value.

3. "Back the Beef" Newspaper Ad
   The Consumer Group noted that this ad showed the names and logos of the ATCO Group and Direct Energy on the same page. The Consumer Group stated that this ad was not for marketing purposes, however an ad that appeared a few days later featured both Direct Energy and DEP and solicited names for marketing purposes. The Consumer Group described this as ATCO participating in a marketing campaign which indirectly supported marketing efforts for DEML. The Consumer Group submitted that this violated the spirit of sections 17, 18 and 3(1) of the Code and 19(2) of the Electric Code.

4. DEML Website
   The Consumer Group noted that only one of nine pages on the Direct Energy website discusses DERS and the required disclaimers do not appear. The Consumer Group also noted that there is no mention that DEP is an unregulated service.

The Consumer Group noted that DEML maintained that it was not subject to the Code until the transaction is completed. The Consumer Group submitted that it was not the intent of the Codes to allow a potential market entrant to ignore the rules until it becomes an active participant.

HVAC

HVAC submitted that the purpose and intent of the *Gas Code Regulation* is abrogated if a participant is allowed to arrange their affairs so that it may exercise control and direction through common management over both its unregulated and regulated market participants. HVAC also submitted that nothing in the *Gas Code Regulation* limits or restricts the Board from imposing terms and conditions on an approval made pursuant to section 2 of the *DGS Regulation*, including those which concern how the default gas supply provider represents itself to the public.

HVAC noted that sections 17 and 18 of the *Gas Code Regulation* contemplate the potential use of a similar logo by the default supply provider and a retailer. However, HVAC argued that these sections have no relevance on the Board's obligations to ensure that the public interest is met when it considers approvals made pursuant to section 2 of the *DGS Regulation*. Further, HVAC noted that sections 17 and 18 of the *Gas Code Regulation* contemplate that a default supply provider may allow access to a billing envelope to a retailer. HVAC argued that the manner and circumstances under which this access occurs remains subject to the Board's oversight. HVAC stated that the Board has exclusive authority to ensure that billing services are carried out in a manner consistent with the purpose and intent of the GUA, including promotion of customer service, prevention of market confusion and promotion of fair market competition.

HVAC submitted that the *Gas Code Regulation* should be applied so that ATCO in no way provides preferential references to Direct Energy (regulated or otherwise) and that Direct Energy be explicitly precluded from the provision of competitive energy services should DERS become an agent for ATCO EnergySense or directly becomes an agent for the EnerGuide program.

HVAC agreed with Calgary that a condition of approval of the sale should be that the compliance plans required DEML, under each of the *Gas and Electric Code Regulations*, be filed, publicly examined, and approved by the Board and MSA before the transaction closes.

HVAC noted that compliance plans are intended to include public interest safeguards, which prevent unfair competitive advantages and protection from market and customer confusion issues. Given the integral nature of the transaction, the close relationship between ATCO and DEML, HVAC submitted that, in these circumstances, a compliance plan should be filed. This would provide the public with further assurances and safeguards, and would also prevent any apprehension that any later approval must be granted since the transactions have been approved.

DEML

DEML noted that, if the proposed transaction closes, DERS and DEP will need to obtain approval of their respective retail gas and electricity compliance plans before DEP is able to provide retail energy services. DEML stated that it intends to structure the entities to comply with the purpose, letter and substance of the *Code of Conduct Regulations*. DEML further noted that DEP is subject to the requirements of the *Fair Trading Act*, R.S.A. 2000 c. F-2 and all requirements related to its licenses pertaining to the sale of retail electricity and gas in the competitive marketplace.

DEML noted that the electric compliance plans are subject to approval by the MSA and the gas compliance plans are subject to approval by the Board. DEML further noted that if the compliance plans have not been approved by the time of the closing of the transaction, DERS will still be able to assume the responsibility for providing regulated retail services; however, the unregulated affiliate will not be able to provide unregulated retail services until the compliance plans have been approved.

DEML therefore disagreed that it is necessary to have the Code of Conduct compliance plan approved as a condition of the sale. DERS argued that it should not be subject to conditions or restrictions that do not apply equally to all other regulated service providers. Such a condition would create an unleveled playing field in Alberta and is contrary to the Alberta Government's retail energy market policy conditions.

Views of ATCO

ATCO noted that several parties pursued the issue of compliance plans with ATCO and DERS. ATCO argued that a compliance plan does not have to be filed or approved for the deal to close. These plans can be approved at a later date, as the Code is clear – the approval is required before an affiliated retailer provides service. Therefore, DERS can proceed with its regulated business. ATCO submitted that DEML understands and acknowledges the constraints that are placed on DEP until a Compliance Plan is approved. There is no need for any condition or other action by this Board regarding the Direct Energy Compliance Plans in the context of these proceedings. Further, ATCO noted that at the time compliance plans are filed, the appropriate authority will take whatever actions it deems necessary and such plans will be considered in that forum.

Views of the Board

The Board notes that DERS filed its Code of Conduct Compliance Plans (the Plans) for approval with the Board and the MSA on October 22, 2003. The Board is in the process of reviewing the proposed Plan and will be dealing with it as a separate application from this process. The Board notes that the Electric Plan is filed with the MSA for approval. Therefore the Board has no jurisdiction regarding the process that is being used to review the Electric Plan.

Calgary and other Intervenors recommended that approval of the Application be deferred until all compliance plans required by the *Code of Conduct Regulations* are approved. The Board however notes that neither the *Electric* or the *Gas Code Regulations* requires that approval of the Plan be in place before a regulated retailer such as DERS can offer service. The restriction is only on DEP being able to operate as an unregulated affiliate retailer before a Plan is approved. Therefore the Board considers that there is no reason to withhold approval of the Application before the Plan has been approved.

4 SALE PRICE / ALLOCATION OF SALE PRICE

In response to BR-ATCO-01, ATCO indicated that the total appointment fees for the electric and gas contracts totaled $128,600,020.The appointment fees were allocated to the various agreements as listed below:

Table 1. Allocation of Appointment Fees

ATCO Electric	Appointment Fee in Contract
Electricity Assets Transfer Agreement (EAT Agreement)	$10
RRO Arrangement Agreement (RROA Agreement)	$7,650,000
Default Retailer/Supplier Of Last Resort Agreement (DR/SOLR Agreement)	$4,370,000
REA Arrangement Agreement (REAA Agreement)	$1,090,000
Residual Rights Agreement (RR Agreement)	$8,750,000
Total	$21,860,010

ATCO Gas	Appointment Fee in Contract
Gas Assets Transfer Agreement (GAT Agreement)	$10
DSP Arrangement Agreement (DSPA Agreement)	$37,360,000
Residual Rights Agreement (RR Agreement)	$69,380,000
Total	$106,740,010

Total Appointment Fees - Gas and Electric	**$128,600,020**

ATCO indicated that Board approval was only required for the EATA, RRO Arrangement Agreement, GATA, and the DSP Arrangement Agreement. The sale price allocated to these agreements totaled $45,010,020.

ATCO Electric stated that there was no harm to customers arising out of the RRO Arrangement Agreement. Therefore, there was no basis for sharing the proceeds with customers, and all proceeds from this agreement should accrue to shareholders.

Similarly, ATCO Gas stated that customers would be no worse off as a result of the asset transfer and DSP Arrangement Agreement. Since there was no issue around customer harm, there was no basis of sharing the proceeds with customers. ATCO Gas proposed that all the proceeds accrue to shareholders.

Views of the Intervenors

Federation of REAs

The Alberta Federation of REAs (Federation of REAs) also noted that Rural Electrification Association (REA) members would be subject to increased costs of administering energy sales as a result of this transaction, whether the individual REAs choose to transfer to Direct Energy or stay with ATCO Electric. The Federation of REAs submitted that the Board should direct ATCO to ensure that REA members pay no more for this service than they would have had the transaction not been approved, from the funds received from this transaction.

AUMA/CE

AUMA/CE noted that if the negotiated sale price was calculated on a per customer basis, the result was $130/customer. Further, there were no business cases or analyses prepared to evaluate the benefits and costs of the sale price.

AUMA/CE noted that the sale price of $130/customer was unable to be tested. As a result, the AUMA/CE considered that the Board had little choice but to approve the purchase price. However, the AUMA/CE argued that the Board should deal with the allocation of the sale price between ATCO and its customers.

AUMA/CE noted that both ATCO and DEML considered that the value of the transaction was contained in obtaining the rights and entitlements associated with to carrying out the regulated retail functions and that there was no value to the customer information.

With respect to the value of the transaction, AUMA/CE noted that:

- the $128.5 million value was derived based on $130/customer;
- the key driver of value behind is the speed with which customers can be switched from regulated to unregulated products;
- without the customer choosing to stay regulated there is no one to switch;
- the legislation federal, provincial and even regulations go to great length to protect personal or customer information because it has value not just to the customer but to others as well; and
- No profit will be earned in performing the regulated function.

AUMA/CE noted ATCO's position that the sale price and the allocation of the sale price to the various agreements was not before the Board for approval. AUMA/CE argued that the sale of the regulated retail function gave DEML a "proxy" for receiving customer consent to obtain the customer information, which is where the value of the transaction was contained. As a result, the Board should question the allocation of the sale price.

AUMA/CE noted ATCO's argument that it would not make sense for it to accept any less than the maximum it could achieve for the sale. AUMA/CE submit that if ATCO I-Tek stood to significantly benefit from the related service contract, ATCO might accept a lower sales price.

The AUMA/CE considered that the Board should determine whether or not the sale price should be shared between ATCO and its customers. While the allocation was supposedly based on negotiations, the AUMA/CE considered that the allocations were arbitrary and not to the benefit of customers.

The AUMA/CE noted that knowing how the value in this transaction was created was key to determining if there should be an allocation of the sale price between ATCO and its customers. AUMA/CE considered that the value in this transaction lies with the customer and customer information, which DEML will use to launch a variety of unregulated products. By remaining on the regulated rate, customers have created the majority of the value associated with this transaction. Further, these customers have paid the costs associated with providing the regulated rate option.

The AUMA/CE noted that the Federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) was designed to protect the privacy of personal information. Both the definition and transfer of customer information proposed in the EATA and GATA falls within the jurisdiction of the PIPEDA legislation. AUMA/CE considered that great care must be taken to ensure that compliance plans and exemptions sought do not cross the boundary of this legislation. Further, should this transaction not be completed by the time PIPEDA legislation becomes effective, ATCO and DEML would be required to obtain the consent from each customer to transfer the customer information.

The AUMA/CE also noted the provincial privacy legislation (*Personal Information Protection Act*) was also designed to protect personal information. Given that the primary purpose of the sale transaction is to transfer personal information from ATCO to DEML, the proposed transaction would also be subject to the pending legislation.

AUMA/CE noted that DEML was acquiring the customer base and personal information, with plans to switch customers to unregulated service and cross sell other unregulated products. AUMA/CE argued that this goes far beyond the purposes for which ATCO has obtained the personal information.

The AUMA/CE noted that customer consent has not been obtained to use any of the customer information. Further, the impact of these privacy laws should have been known and dealt with and not used as an argument to have the Board's decision regarding the sale expedited.

AUMA/CE considered that the *Code of Conduct Regulations* also supports the underlying value of the customer information. Section 21 of the *Code of Conduct Regulations* state that a retailer obtains an unfair competitive advantage if it receives customer information from an owner or regulated provider "for sales or marketing purposes," unless the *Code of Conduct Regulations* permits the retailer to have that customer information. AUMA/CE argued that the only way a retailer could get this information was through purchasing the regulated business.

AUMA/CE stated that DEML would recover the purchase price through its unregulated offerings. The key component of this transaction was the customer information that DEML would use to supply unregulated offerings. AUMA/CE considered that the customer information belongs to the customer and that customers should be appropriately reimbursed.

AUMA/CE considered that this dovetailed with Decision 2000-71 wherein the Board stated that:

> …if costs associated with creating value, whether it be tangible or intangible asset, have been borne by ratepayers then fairness dictates that some consideration upon transfer of the asset should flow to ratepayers[23]

AUMA/CE submitted that the Board does not need to follow the same process used in Decision 2000-71 to determine the amount of proceeds that should be allocated to ATCO's customers. Customers should be entitled to the vast majority of the $128.5 million sale price.

AUMA/CE noted that the allocation of the sales price to the various agreements was based on negotiation, rather than a determination of the value of each agreement. AUMA/CE argued that the sale price was unsubstantiated and that the allocation of the sale price to the various agreements was arbitrary.

AUMA/CE also noted that the allocation of the sales price to the various agreements was done for tax and accounting implications as they pertained to Centrica. AUMA/CE argued that the allocation of the purchase price to the various agreements was not done for the benefit of ATCO's customers. Further, the allocation to the various contracts was meaningless and an after-the-fact decision once the price of $130/customer had been established.

AUMA/CE stated that the allocation of ten dollars to both the EATA and GATA was neither fair nor reasonable, given that the GATA had a value far greater than ten dollars.

AUMA/CE considered that there was a link between the sale price for the overall package and the ATCO I-Tek contract. ATCO expressed a preference for the ATCO I-Tek contract to be included as part of the overall package. AUMA/CE submitted that the overall picture of this transaction includes examining the ATCO Retail Sale and the ATCO I-Tek contract revenue. The Board should take this into account when assessing the sale price and allocation of sale price.

AUMA/CE noted ATCO's position that the value which has been created has arisen from deregulation and restructuring, and ATCO is entitled to all the proceeds. In its evidence, ATCO stated:

> In terms of potential impacts on rates, cost increases if any, are the product of deregulation and restructuring and should be recovered from customers in the same manner that the benefits of deregulation and restructuring accrue to customers.[24]

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[23] Decision 2000-71, p. 18

[24] ATCO Application, p. 2-8

AUMA/CE argued that ATCO can not try to reap only the benefits of deregulation and restructuring and foist the additional costs from deregulation and restructuring onto customers. Since benefits follow costs, customers have a right to the proceeds.

Calgary

Calgary noted that the sale price, based on an amount of $130 per customer, was determined through arms length negotiations between ATCO and DEML. Further, no internal or external fair market value evaluations were conducted nor did ATCO have a written business case supporting the transaction.

Calgary noted that DEML defined ATCO's customer base as the relationship with the customer. The customer relationship was an intangible asset and formed part of the goodwill of ATCO. Calgary considered that the value of this transaction resided with the customer base.

Calgary considered that an appropriate allocation of the sale proceeds could not be decided without a determination of whether the total amount attributed to the sale was appropriate. A key component of the sale was the 10-year ATCO I-Tek agreement, which had a net present value of $170 per customer, which would bring the value of this transaction to $300 per customer. Calgary argued that customers have paid $130 to develop the customer base, and customers would also pay $170 in additional costs if the DRT/RRT application by DEML were approved.

Calgary noted the allocation of the sale price to the various agreements, and ATCO's position that the total value of the agreements that could be reviewed by the Board was $45 million. Calgary considered that the issue for the Board was whether or not Decision 2000-71 would allow a portion of the purchase price to be placed outside of the Board's review.

Calgary noted in Decision 2000-71 that the Board considered that approval of the "Residual Rights Agreement was not necessary, because the "rights and privileges" being conveyed did not relate to "regulated functions." Calgary argued that by allocating a significant portion of the total purchase price to the Residual Rights Agreement, ATCO was using the precedent established in Decision 2000-71 to segregate some of the transactions from the Board's scrutiny. Calgary argued that the Board has jurisdiction to deal with the proceeds in whatever manner it deems to be in the public interest. Further, the amount of consideration and allocation to the various contracts are relevant in this proceeding.

Calgary argued that the details associated with UNCA's sale of retail assets to EESAI dealt with in Decision 2000-71 and this Application was significantly different and that the Board's findings in Decision 2000-71 should not apply to this Application. Calgary considered that the Board was fully able to deal with the entire proceeds of the sale.

In Decision 2000-71 the Board determined that ratepayers did not have claim to the proceeds of the sale because there was no evidence that ratepayers had paid for the intangible assets being transferred. Calgary pointed out that Decision 2000-71 was an expedited paper proceeding, and the Board did not have the opportunity to hear expert analysis on who paid for the intangible assets. Calgary argued that the value of this transaction resides in the transfer of ATCO's customer base, customer relationship, and customer information to DERS. Further, it was ratepayers who paid for the development and storage of the customer information.

Calgary noted that the major gas contracts assigned to DEML for ten dollars were "in the money" and had an estimated value of $1.2 million. Also, the transfer of customer information from ATCO to DEML will cost $550,000 yet the agreement is valued at ten dollars.

Calgary considered that there would be a windfall benefit for ATCO shareholders, first from the net proceeds of the sale and secondly through the ATCO I-Tek agreement.

Calgary noted that it was the Board's policy not to allow the recovery of a purchase price (or premium) in regulated rates. Calgary considered that to the extent that regulated customers switch to an unregulated rate, the return on DEML's investment would be obtained from the same customer base that paid rates and enabled ATCO to develop and maintain the customer relationship.

Calgary submitted that any gain on the sale of utility assets to shareholders represents a recovery in addition to the fair rate of return as determined by the Board. Ratepayers indirectly finance the assets of the utility and are therefore entitled to a portion of their sale. Calgary argued that it was equitable, fair and consistent with the concept of the regulatory compact to allow ratepayers to participate in the gain on sale.

Calgary considered that DEML would only receive nominal future value as a result of the Residual Rights Agreements, and that. these agreements should only be assigned a nominal value. However, a majority of the purchase price should be assigned to the customer base or customer relationship, which contains the substance of DEML's proposed purchase. Calgary argued that ATCO's allocation of the purchase price to the various agreements did not reflect the value contained within the customer base.

Calgary also noted that ratepayers would be saddled with the legislated burden of paying for the deregulation costs that have created value in the customer base. Customers who remain on the regulated rate will not see any benefit, however, they will see their gas bills escalate without any improvement in service levels.

Consumer Group

The Consumer Group noted the sale price and the allocation to the various agreements, and argued that the Applications should not be approved. The Consumer Group considered that even if customers were to receive 100% of the sale proceeds, customers would still be worse off as a result of the sale. There would be harm to customers over and above the financial aspects of this Application. If the Application was approved, the Consumer Group argued that customers should be allocated 100% of the sale proceeds.

The Consumer Group noted that in recent Board Decisions, the TransAlta formula and calculations of no harm have evolved to ensure that customers receive an appropriate amount of sale proceeds and are not harmed by sales transactions. Given the circumstances it would be appropriate for customers to be entitled to the greater of the TransAlta formula or no harm amount.

The Consumer Group noted that ATCO referenced government policy and various press releases to support the proposed sale. The Consumer Group considered that the Board should look to legislation and associated regulations to determine government policy. Further, the Board is in a position to balance the interests of utility shareholders and customers, and has the authority to deal with the allocation of proceeds as a condition of the sale.

The Consumer Group noted that there was no opposing interest in the negotiations assigning the purchase price to the various agreements. As a result, the Board must deem appropriate allocations to ensure that customers are not harmed.

The Consumer Group considered that ATCO would attempt to structure the transaction to obtain the greatest value for shareholders. By assigning considerable value to the residual rights agreements, ATCO was maximizing the benefit for shareholders, which would result in harm for customers. ATCO must act prudently in structuring the transaction to ensure that customers are not harmed.

The Consumer Group considered that ATCO was not entitled to assign responsibility of the regulated function to a third party. Rather, ATCO was required to ensure that its actions were prudent and did not harm customers, and these actions should receive Board approval. If there was harm to customers, the Board should deny the Application, or if means are available, ensure that the harm is eliminated or at least mitigated to an acceptable level.

The Consumer Group stated that in the calculation of a no harm amount, an 8% discount rate should be applied to the difference of the DERS revenue requirement plus any amounts deducted from the ATCO Electric revenue requirement. Further, it would be appropriate to increase the DERS Non-Energy RRT revenue requirement by the rate of inflation to account for revenue growth. The appropriate time horizon was 25 years, as harm would extend into the future.

The Consumer Group considered that with respect to natural gas, harm to customers in both monetary and non-monetary terms was such that even if 100% of the purchase price were allocated to consumers it would be insufficient to hold customers harmless. For residential gas customers, the impact of the changes would result in a 20% increase in rates. According to the evidence submitted by Calgary, in 27 months, ratepayers will have been burdened with costs approximately equal to the proposed shareholder profits on a pre-tax basis.

The Consumer Group also considered that harm to customers would result from the electric portion of the proposed sale. Harm for the electrical component could be calculated by using the non-energy revenue requirement for the DERS RRT of $13.175 million. The gain associated with the electrical agreements was insufficient to cover two years of harm arising from the transactions. The $21.86 million, which was associated with the electric portion of the transactions, should be allocated to customers to mitigate harm that would occur.

The Consumer Group noted ATCO's argument that the value of the transaction was created as a result of deregulation, restructuring, and government policy. Further, government policy was to allow retail rates at any level to be charged to customers. The Consumer Group considered that without the historical regulated service, there would be no customers and associated information, and therefore no value could be created so the transaction could not occur.

The Consumer Group also noted ATCO's comment that the only available precedent confirmed that the entire purchase price would accrue to the benefit of shareholders. The Consumer Group stated that the referenced precedent did not include an affiliate securing a monopoly contract for customer care services. The ATCO I-Tek contract has changed the perception of price, and the value of the exclusive customer care contract must be taken into account.

DEML

DEML stated that the purchase price was arrived at through arms-length negotiations between itself and ATCO. Calgary and other intervenors considered that the value of the transaction was contained in the acquisition of customer data. DEML argued that the information would have to be transferred to fulfill the regulated functions and it was not going to earn an economic return on regulated customers. DEML's interest in the allocation of the sales price was driven by the accounting and tax treatment that they would receive.

DEML argued that there was no legal or rational foundation for any party to arbitrarily assign a different value to the various agreements than what was agreed to by ATCO and DEML through negotiations.

DEML noted that the retail assets to be transferred from ATCO were not rate base assets and the consideration paid for the EATA and GATA was nominal. In Decision 2000-71, the Board held that UNCA's shareholders had an exclusive right to the proceeds arising from the appointments and the residual rights agreement. DEML argued that the Board should not depart from the reasoning in that Decision.

DEML noted that Calgary attempted to draw a distinction between existing unregulated retail rights and unknown future rights, and emphasizes future rights with reference to the price being paid under the Residual Rights Agreement. DEML stated that Calgary's assumption was incorrect that the Residual Rights Agreement confers unknown future rights.

Any value that accrues to ATCO as a result of this transaction was a product of its legislative entitlement to appoint DERS as the regulated service provider. DEML argued that no basis has been established in this proceeding to depart from the precedent in Decision 2000-71. Further, it follows that there was no basis upon which the Board could order any of the transaction proceeds to be allocated to customers.

DEML also noted Calgary's argument that the purchase price would be recovered from regulated customers who switch to an unregulated product. DEML argued that if a customer were to choose an unregulated supplier, the customer would make that choice based on price and terms. There was no guarantee that customers would switch to competitive offerings; further, the recovery of the purchase price on competitive offerings is outside the scope of this Application.

DEML noted the AUMA/CE raised the issue as to whether the gas supply contracts had a value greater than ten dollars. DEML argued that the value of such contracts are irrelevant since the contracts will be dedicated to regulated service by DERS. The benefits or costs of such contracts will be passed through to regulated customers by DERS.

DEML also noted that the AUMA/CE discussed the PIPEDA legislation with the intent of advocating to the Board and the MSA that great care must be taken to ensure that any compliance plans do not offend the legislation. DEML considered that compliance plans were intended to ensure that the business operations of the parties were performed in accordance with the specific requirements of the *Code of Conduct Regulations*. DEML also stated that it would comply with all laws, both provincial and federal.

Views of ATCO

ATCO noted that various parties have advocated that all or a substantial portion of the proceeds received from the transfer of both the regulated and unregulated functions be allocated to customers. ATCO argued that the amount of consideration and the allocation to the various transaction agreements is not before the Board for approval. For the Board to rule on these matters, it must disagree with ATCO and seize control over matters related to the consideration and the allocation before the question of what, if any, portion of the proceeds should be allocated to customers.

ATCO argued that the prevailing legislation entitles ATCO to assign responsibility for the performance of the regulated retail functions, including associated obligations and responsibilities, to a third party of its choosing. As part of transferring the regulated retail functions to DERS, ATCO also sought to transfer certain associated assets, which are necessary in order for DERS to perform the assigned functions.

ATCO noted that DERS confirmed it would not be recovering the purchase price through regulated rates, but would recover the price through the unregulated side of the business. ATCO considered that the value of the transaction was contained with the intangible assets, which was the right to provide certain regulated and unregulated services to retail customers. ATCO also noted that DERS would attempt to improve service and gain customer's trust over time so that customers would consider taking unregulated products from DEML in the future.

The agreement with DEML represented the highest amount of consideration possible for a transaction that would close. This deal reflected the highest value that ATCO could extract for its shareholders. ATCO considered that the best deal possible was reached for the regulated and unregulated functions. This was the essence of a fair market value and should be accepted as such by the Board.

When considering the issue of whether or not any portion of the sale price should be allocated to customers, ATCO argued that ratepayers have no ownership claim, whether legal, beneficial or otherwise, in the assets of a regulated utility. Utility ratepayers pay an approved rate for the provision of a service provided by the utility. Such payment for service carries with it no entitlement to any assets of the utility, which are legally and beneficially owned by the company and used in the provision of regulated services.

ATCO noted the following Board findings from Decision 2000-71, which supported its argument that customers are not entitled to a portion of the sales proceeds:

> It is a well-settled legal principal that the assets, both tangible and intangible, of a business are owned by the owners of the business. In the case of a corporation, the shareholders own a right to share in the assets of the corporation upon dissolution.[25]
>
> In the present case, however the intangible asset being transferred was not created out of the costs of providing regulated service. The value created in the case of the RRO arrangement arises from deregulation and the restructuring authored by Government policy. The Board considers, absent evidence demonstrating that ratepayers have paid for

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[25] Decision 2000-71, p.17

> the intangible asset being transferred, namely the right to provide the RROT, that it is owned by the company and shareholders have an exclusive right to the proceeds arising from the RRO Arrangement Agreement. Therefore the Board does not believe that customers are entitled to any portion of the $33 million to be paid EESAI in connection with its appointment as the provider of the RRO in UNCA's service territory. Similarly, the Board considers that shareholders have an exclusive right to the proceeds arising from the appointments and the Residual Rights Agreement.[26]

Similar to UNCA's sale of retail assets to EESAI, ATCO argued that the value has been created from deregulation and the restructuring implemented by Government policy, and not out of the historic provision of regulated services. Therefore, there is no need to resolve the issue surrounding an appropriate allocation to customers, as it is clear that the exclusive ownership of the subject intangible assets belong to the shareholder.

ATCO stated that the functions being transferred arise from the Government's policy to pursue customer choice, which has allowed the separation of distribution and retail functions. The legislation enacted to implement deregulation and restructuring has provided the sales opportunity and created an intangible asset. This asset belongs entirely to the utility shareholders, who have an exclusive right to the proceeds arising from the transfers.

Calgary did not accept that parties to an arms-length negotiation can arrive at an agreed upon allocation of values. ATCO argued that two knowledgeable, informed and arms-length parties agreed to a value and an allocation thereof through negotiations, which was the essence of fair market value and should be accepted as such.

ATCO stated that upon appointment of DERS to perform the retail functions, it was legally obligated to transfer the required customer information to DERS to perform these functions. This information is of little value because all retailers are entitled to it. The information that would be provided to DERS to perform the assigned functions is the same information provided to any retailer which attracts an ATCO customer. The information was necessary to allow such parties to perform their functions.

ATCO noted that a significant amount of time was devoted to the allocation of the purchase price between the various agreements. ATCO and DERS confirmed during cross-examination that tax and accounting matters played a significant role in the allocation of the proceeds. Information regarding the allocation among the various agreements in the UNCA sale to EESAI was also used. ATCO argued that there was no basis for the Board to conclude that any portion of the net proceeds from the sale of the regulated retail functions be allocated to any of the agreements in a manner different than put forth by ATCO for the benefit of ratepayers.

ATCO noted Calgary's argument that the customer relationship was an intangible asset that formed part of the goodwill of ATCO. ATCO noted that in Decision 2000-71, the Board indicated that:

> On the other hand, however, the value of a public utility's name and reputation as represented by goodwill are generally not considered to be a cost of rendering utility

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[26] Decision 2000-71, p.18

> service and the costs associated with creating that goodwill have not been borne by customers.[27]

ATCO considered that customers were not entitled to share in the proceeds of the sale.

ATCO noted that AUMA/CE considered that it had not fully substantiated the sale price of the agreement. ATCO pointed out that two willing parties arrived at the sale price through arms length negotiations.

ATCO also noted that the AUMA/CE considered that consumers who chose to remain on the regulated supply option created the majority of the value of the transaction and Calgary considered that consumers paid for the customer base. ATCO argued that customers have no interest in the assets of the utility. Customers receive regulated service and pay approved regulated rates and nothing more.

ATCO noted that AUMA/CE raised issues with respect to the PIPEDA legislation. ATCO stated that the legislation was not applicable, as it would not be transferring any customer information across provincial boundaries. Further, the transfer of information to DERS occurs by operation of law. ATCO considered that there were no privacy issues for the Board to address in this Application.

Views of the Board

The Board notes section 101(2)(d) of the PUB Act states:

> **101(2)** No owner of a public utility designated under subsection (1) shall
>
> (d) without the approval of the Board,
>
> (i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of them, or
>
> (ii) merge or consolidate its property, franchises, privileges or rights, or any part of them,
>
> and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a public utility designated under subsection (1) in the ordinary course of the owner's business.

Similarly, section 26(2)(d) of the GUA states:

> **26(2)** No owner of a gas utility designated under subsection (1) shall
>
> (d) without the approval of the Board,
>
> (i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of it or them, or

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[27] Decision 2000-71, p.18

> (ii) merge or consolidate its property, franchises, privileges or rights, or any part of it or them,
>
> and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a gas utility designated under subsection (1) in the ordinary course of the owner's business.

The Board notes that both pieces of legislation require that the property, franchises, privileges or rights of the designated utility require Board approval before a sale or disposition can be made.

With respect to the EATA, RRO Arrangement Agreement, GATA, and the DSP Arrangement Agreement, ATCO requested that the Board only approve the transfer of the electric and gas assets and the arrangements with DERS to provide the RRT and DSP functions. In direct contrast, intervenors considered that the Board had the authority to deal with the full proceeds of the sale; therefore, all the agreements were reviewable by the Board.

The Board notes its earlier comments that the asset transfers and the appointment of DERS as the supplier of the Regulated Rate function and the DSP function are inextricably linked into a single transaction. One will not happen without the other also being approved by this Board.

The Board agrees with ATCO that Board approval is only required for the transfer of assets out of the ordinary course of business and for the appointment of DERS as RRT and DSP provider. The Board notes that it has approved the asset transfers and the appointment of DERS as the supplier of the Regulated Rate function and the DSP function.

With respect to the remaining agreements, namely the Default Supplier of Last Resort Agreement, REA Arrangement Agreement, Electric Residual Rights Agreement, and Gas Residual Rights Agreement, the Board notes the following passage from Decision 2000-71[28] as it relates to similar agreements in the UtiliCorp sale and appointment of EESAI:

> With respect to the Appointments and the Residual Rights Agreement, the Board agrees with UNCA/UNC that, in the circumstances of this case, no Board approval is required. The Board notes, in particular, that the "rights or privileges" being conferred on EESAI by these other appointments and agreements do not relate to "regulated" functions of UNCA/UNC. Rather, they are rights and privileges created by the legislation as part of restructuring of the electricity industry and relate to functions that are intended to be non-regulated. They are not regulated assets, rights or privileges being transferred out of regulated control. Without deciding whether these rights or privileges are of a kind that might otherwise be included within the language of section 91.1(2)(d) of the PUB Act (therefore requiring approval under that Act), the Board is of the view that the specific provisions of the EU Act and its regulations govern whether approval of these agreements is required. No such approval is contemplated under the EU Act or any of its regulations.

The Board finds the above passage instructive in determining if the Default Supplier of Last Resort Agreement, REA Arrangement Agreement, Electric Residual Rights Agreement, and Gas Residual Rights Agreement require Board approval. Accordingly, without deciding whether these rights or privileges are of a kind that might otherwise be included within the language of section 101(2(d)) of the PUB Act or section 26(2)(d) of the GUA, and therefore require Board approval, the Board is of the view that the specific provisions of the EUA, the GUA and their respective regulations, govern whether approval of these agreements is required. No such approval is contemplated under this legislation.

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[28] Decision 2000-71, p.3

Except to the extent that the consideration paid by DEML to ATCO may have an impact on customers, the Board does not consider it necessary or appropriate to approve the amount flowing from DEML to ATCO pursuant to the RRO Arrangement Agreement and the DSP Arrangement Agreement. The Board does not believe that section 11 of the *RDS Regulation* and section 2 of the *DGS Regulation* were intended to or contemplate Board approval of the consideration agreed upon between the parties.

The Board finds that the only determination that it is required to make respecting the sale price is with respect to the asset transfer price, unless the Board determines that there is some sharing of the proceeds required due to harm caused by the transaction. The Board has addressed the issue of harm in section 3 of this Decision.

The Board will address the issue of intangible assets including customer information below. With respect to the tangible assets, the Board notes that Intervenors argued that there was significant value in the major contracts associated with the GATA that did not justify the ten-dollar allocation. DEML argued that the value of the gas contracts were irrelevant since the contracts will be dedicated to regulated service, and the benefits or costs of such contracts will be passed through to regulated customers by DERS.

The Board notes the following exchange during the hearing:

> 17 Q. Is it open to DEML to sell these contracts to secure a
> 18 value of $1.2 million or some other value?
> 19 A. It's open to Direct Energy Regulated Services to hold
> 20 these contracts for the benefit of regulated customers.
> 21 Q. So would I be correct in restating your answer that
> 22 Direct Energy Regulated is going to be using these contracts
> 23 to provide the regulated default supply provider service?
> 24 A. Yes, sir.[29]

The Board understands that these contracts will not be sold but rather used directly for the benefit of regulated customers. The Board considers that, if an asset is being transferred to another business and will remain in regulated service, it is not necessary to make a determination on the transfer price, other than to ensure that the assets is being transferred at the regulated rate base amount from one entity to the next. If at some point in time after this transfer, an asset is then proposed to be removed from regulated service, the Board would then make a determination with respect to the appropriateness of the price paid for the asset and how the proceeds would be shared between customers and shareholders. Therefore, the Board does not consider the nominal price of ten dollars for the transfer of the gas contracts to be unreasonable.

The Board notes that, during the hearing, the major contracts associated with the EATA were discussed. ATCO stated that the major contracts under the agreement were not assignable, and were included in the Application for completeness. The Board is satisfied that the $10 nominal value represents an appropriate value for the tangible electric assets.

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[29] Tr. p. 1231, lines 17-24

With respect to the issue of intangible assets, the Board notes that parties opposed to the Application considered that the asset of value being transferred to DEML was the customer information and that with this information DEML would be able to provide unregulated products and services.

In contrast ATCO and DEML argued that there was no basis for the Board to depart from the precedent set in Decision 2000-71, and there was no basis for the Board to order that customers receive a portion of the sales. ATCO argued that the exclusive ownership of the intangible assets belong to the shareholder, and customers who have received regulated service have no ownership claims on the assets of the utility that was used in providing regulated service.

In resolving this issue, the Board considers that it would be helpful to review the principles set out in Decision 2000-71. The Board notes the following from the Decision:

> Arguments on whether public utility assets are owned by shareholders or ratepayers have turned on the question of how the value in the asset was created. If costs associated with creating the value, whether it be a tangible or intangible asset, have been borne by ratepayers then fairness dictates that some consideration upon transfer of that asset should flow to ratepayers.[30]

The Board considers that what is being transferred is the right to offer the regulated electric or gas service. The Board notes that in section 10(3)(b) of the *Electric Code Regulation* states:

> 10(3) Customer information may be disclosed without the customer's consent to the following specified persons or for any of the following purposes:
>
> (b) to a person authorized by the owner that provides electricity services to eligible customers in the owner's service area under a regulated rate tariff.

Similarly, in section 10(3)(a) and (b) of the *Gas Code Regulation* it states:

> 10(3) Customer information may be disclosed without the customer's consent, to the following specific persons or for any of the following purposes:
>
> (a) to the customer's retailer;
> (b) to the customer's default supply provider;

The Board agrees with ATCO that the customer information needs to be transferred to DEML as the regulated gas and electric retailer in order for them to carry out the functions that are being transferred, namely the provision of regulated service. Further, for customers to continue to receive the benefits of regulated service this information must be provided to the retailer.

The Board also finds, in a manner consistent with the Board's findings in Decision 2000-071, that ATCO's right to transfer the obligation for provision of regulated service has arisen as a result of changes to the legislation. The value that has been realized in the transaction has been created from deregulation and the restructuring implemented by Government policy, and did not arise from the historic provision of regulated services. The cost associated with creating this right has not been borne by ratepayers. Therefore, the Board finds that customers have not created the value being transferred to DEML. As a result, there is no need to resolve the issue surrounding an appropriate allocation to customers. Therefore, the Board finds that customers should not be allocated a portion of the sale price.

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[30] Decision 2000-71, p. 18

5 CONDITIONS OF SALE

In their argument or reply argument, intervenors made recommendations to the Board as to certain conditions that should be applied if the sale were to be approved.

Views of the Intervenors

Calgary

Calgary considered that the Board should approve the retail sale based on the following conditions:

(a) that customers receive their entitlement to the full proceeds of the sale relating to ATCO's customer base;

(b) that the approximate annual $47.4 million of current gas ratepayers harm will be completely eliminated when all proceedings related to the establishment of distribution and default supply tariffs are completed;

(c) that ATCO and DEML confirm they will not co-brand, or alternatively, all retailers are allowed to co-brand with ATCO;

(d) that DERS be established as a separate legal entity with a separate name distinctive from DEML;

(e) that approval is deferred until all compliance plans required by the *Code of Conduct Regulations* are reviewed and approved after a full public hearing;

(f) that ATCO I-Tek and DEML remove the exclusivity clause from the ATCO I-Tek MS Agreement; and

(g) that ATCO and DEML cancel the Non-Competition Agreement and all exclusive retail rights to DEML granted by the Residual Rights Agreement.

Alternatively, Calgary recommended that the sale transaction, as it was currently constituted be denied.

Consumer Group

The Consumer Group noted the broad powers of the Board to impose conditions on the approval of an application, in Decision 2001-65 the Board indicated that it considered its power to offset or mitigate potential harm to customers flowed from the very broad mandate to protect consumers in the public interest recognized by the Alberta Court of Appeal and the Supreme Court of Canada. The Consumer Group considered that the Board's broad powers in regard to attaching conditions remain undiminished in an application of this type.

The Consumer Group considered that the only restriction with respect to conditions that the Board could issue would be if the conditions were in conflict with other legislation. The conditions could be more stringent than those contained in legislation as noted in the examples from the Georgia Public Service Commission and the Public Utility Commission of Texas.

The Consumer Group argued that the name for the regulated entity providing RRT and DRT functions should not be the same as the name for the unregulated business. The Consumer Group noted that the name "Direct Energy" has already been co-branded with ATCO. DEML should be required to choose other names for its entities that will provide unregulated products and services in Alberta. Furthermore, names that include value judgments such as "Preferred" and "Essential" should be avoided as misleading.

The Consumer Group considered that the Board should create an energy "Do Not Call List" and that customers of gas Co-ops and municipal gas systems should automatically be entered on this Do Not Call list. If the Board does not create the list, it should require that DERS create and maintain the Do Not Call List, and require that DEML's unregulated marketers avoid calling customers on the list.

The Consumer Group argued that Direct Energy should pay penalties based on the monthly number of confirmed complaints involving deceptive trade practices received by the Board regarding door-to-door sales by all of its affiliates, following the model adopted in Texas.

The Consumer Group noted that the issue of line pack ownership was raised during the hearing, and that the ownership of the line pack was not clear. Further, the Retailer Service and GUA Compliance filing does not reveal any intent to buy back line pack from its customers. The Consumer Group pointed out that in the ATCO Pipelines 2003/2004 GRA, it was argued that the customers of ATCO Pipelines owned the line pack because additions to line pack were recovered through the Unaccounted For Gas (UFG) account. The Consumer Group argued that similar principles apply to line pack on ATCO Gas' distribution system, and that the Board should direct ATCO Gas to make application to purchase the line pack from its customers. This should appropriately be made part of the Retailer Services and GUA Compliance Proceeding.

The Consumer Group submitted that the Board should not accept the proposed corporate structure of the DEML business units performing both regulated and unregulated functions. The Consumer Group stated that without clear separation of the DERS functions into an isolated corporation, risks such as abuses of gas supply volumes held in the successor to the Deferred Gas Account (DGA), and money held in customer security deposits would be exposed to risk of attachment by other creditors of DEML. The Consumer Group argued that if the Board approves the transaction, it should direct that regulated activities, rights and obligations should be under a separate stand-alone corporation.

DEML

DEML noted that Calgary proposed that the Board should impose certain conditions on the sale before it was approved. DEML argued that Calgary's recommendations ignored provisions of the new legislation, specific direction to the Board in examining the reasonableness of the regulated services provider's billing costs, and attempted to usurp the role of the legislature and Alberta Government by creating new code of conduct requirements. As such, Calgary's recommendations should be rejected.

DEML also noted that the Consumer Group raised the idea of creating a "Do Not Call List." DEML considered that the Board does not have the jurisdiction to create a "Do Not Call List," nor does it have the authority to require DERS to create and maintain such a list.

Views of ATCO

ATCO noted that the intervenor evidence filed in this proceeding suggests that a large number of onerous conditions be imposed on ATCO if the subject Application is approved. ATCO argued that many of the suggested conditions were outside the Board's jurisdiction.

ATCO considered that based on the record of these proceedings, a detailed assessment of each and every condition is clearly not warranted. No conditions need be attached to the requested approvals. ATCO considered that the relief requested is straightforward and need not be made subject to any terms or conditions.

ATCO considered that the onerous conditions proposed by intervenors were an attempt to have the Application denied.

Views of the Board

The Board notes that of the recommendations made by Calgary, entitlement to the proceeds, co-branding, and Code of Conduct and compliance plan issues have been dealt with elsewhere in this Decision. Further, the Board notes that the prudence and reasonableness of costs associated with the regulated rates will be dealt with in the RRT/DRT proceeding and in future distribution tariff proceedings.

The Board notes Calgary's recommendation that DERS should be established with a separate name distinctive from DEML. The Consumer Group also made the suggestion that there should be a separate and distinct name for the entity that will be providing regulated service.

The Board considers that ATCO has exercised its right to delegate the function of regulated supply to DEML. Further, the Board considers that the *Electric Code Regulation* and the *Gas Code Regulation* do not preclude the use of similar names for regulated and non-regulated activities. The Board considers that a responsible organization would take the necessary steps to minimize customer confusion if regulated and unregulated services are provided by affiliates with similar names. The Board does note that other Alberta retail service providers use similar names for both regulated and unregulated services.

The Board notes the recommendation of the Consumer Group that DEML should pay penalties based on the monthly number of confirmed complaints involving deceptive trade practices. The Board considers that this recommendation has some merit, given the past history of DEML affiliates and the concerns regarding DEML raised by intervenors in this proceeding.

However, the Board notes that the *Fair Trading Act* and the associated *Natural Gas Direct Marketing*, AR 186/99 and *Electricity Marketing Regulation*, AR 12/2003 contain strict guidelines for marketers and penalties for contravention of the Act. The Board notes that Government Services is the Ministry responsible for this legislation. Further, the Board notes that the Alberta Government has appointed a Utilities Consumer Advocate under Government Services to hear complaints regarding utility matters. The Board considers that sufficient measures currently exist to protect consumers and that the Board does not need to institute penalty mechanisms at this time.

The Board notes that Calgary proposed that DERS be established as a separate legal entity. Similarly, the Consumer Group considered that the proposed corporate structure should not be approved, and noted risks associated with gas supply volumes and security deposits. The Board considers that the *Electric Code Regulation* and the *Gas Code Regulation* do not require the use of a separate legal entity for regulated activities. The Board considers that transparency and cross-subsidization are fundamental concerns when regulated and non-regulated activities are supplied by the same corporate group. While maintaining separate corporate entities for the regulated and non-regulated activities could be of assistance in dealing with these concerns, such a separation is by no means a complete solution. As well, the Board considers that other corporate objectives may impact how an organization decides to organize itself. The Board considers that a responsible organization would take the necessary steps to ensure transparency and prevent cross-subsidization on an ongoing basis particularly if regulated activities are not provided by a separate legal entity.

The Board notes the Consumer Group argument that there was the potential for abuse of gas supply volumes in the successor to the DGA. The Board considers that this is an issue best dealt with in the Retailer Service and GUA Compliance proceeding.

The Consumer Group also noted that security deposits could be at risk for attachment by other creditors of DEML. The Board notes the concern raised by the Consumer Group, however the Board is aware that other utility providers in Alberta currently do not have mechanisms in place to protect security deposits. However, as DEML is a new entity in the utility market in Alberta, the Board considers that it is appropriate to further review this matter in a future rate proceeding. Therefore the Board directs DEML to review the issue of protection of security deposits and to provide the Board and Intervenors with a recommended policy at the time of its next rate application.

The Consumer Group also raised the issues of distribution line pack and "Do Not Call Lists." The Board notes the recommendation from the Consumer Group that the issue of line pack be dealt with as part of the Retailer Service and GUA Compliance proceeding. The Board agrees with this recommendation, and will leave the issue of line pack to be dealt with in that proceeding.

With respect to "Do Not Call Lists," the Board is not aware of any legislation that requires the compilation of such a list. Further, the Board is not persuaded that such a list is required at this time. Therefore, the Board will not require an energy "Do Not Call List" at this time.

6 OTHER MATTERS

6.1 REA Issues

In the Application, ATCO indicated that a number of Agreements were outside the scope of Board jurisdiction. However, ATCO provided certain additional information to assist parties in understanding the proposed transactions. Some of the additional information related to the transfer of REA RRO service to DEML.

Views of the Intervenors

Federation of REAs

The Federation of REAs noted ATCO Electric's position that the Retailer T&C's apply to any person, including REAs. In contrast, the REAs noted that the Board stated in Decision 2003-058[31] that:

> …the Board does not accept, at this time, AE's indications that the new EUA can be interpreted to require that AE's T&Cs be amended to define REAs as Retailers under AE's T&Cs.[32]

The Federation of REAs argued that until this matter can be specifically dealt with in ATCO Electric's next Phase II Application, this issue has been resolved and REAs are not subject to ATCO Electric's Retailer T&C's of Service. Direction should be given to ATCO Electric that REAs are not subject to ATCO Electric's Retailer T&C's of service.

The Federation of REAs noted that in Updated Schedule 1-A-1 of the Application, the REA RRO function would be transferred to DEP. This was in contrast to the Application, which indicated that the transfer of the REA RRO function would be to DERS. The Federation of REAs stated that there was no reason given for this change, and they were opposed to the change unless REA's specifically consented to it.

The Federation of REAs submitted that conditions should be imposed on the sale so that REAs and REA members are held harmless regardless of whether the choice was made to transfer the RRT obligation to DEML or remain with ATCO Electric. The Federation of REAs noted that there was little that could be done to prevent inconvenience and disruption however there are expenses that will accrue to both REAs and their members that can be compensated, if this Application were approved.

The Federation of REAs noted that REAs would be subject to the expenses resulting from organizing and attending meetings, dealing with new contracts, contract revisions and the other requirements engendered by the actions of ATCO Electric and DEML. The Federation of REAs submitted that the Board should direct ATCO to pay those reasonable expenses to REAs caused in complying with the requirements resulting from this transaction.

Views of ATCO

ATCO stated that the "regulator" for any REA is its Board of Directors. Matters related to the impact of the proposed transfer of retail functions on REAs will be dealt with in the appropriate forum, as a commercial matter, as a result, no action is required by this Board in the context of these proceedings regarding REA issues.

Views of the Board

The Board notes the argument from the Federation of REAs that there will be additional costs imposed on REAs as a result of dealing with new contracts. The Board further notes that section 9.7 of the EATA states the following:

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[31] Decision 2003-058 – ATCO Electric Ltd., 2003 Interim Terms and Conditions of Distribution Service, dated July 15, 2003

[32] Decision 2003-058, p. 4

> ATCO Electric will use commercially reasonable efforts to ensure that the board of directors of each REA will (i) consent to the grant to DEML and agreement by DEML to accept and perform the RRO Function for the remainder of the term of ATCO Electric's existing appointment as Wire Services Provider to such REA, and (ii) execute and deliver an Acknowledgement and Consent Agreement in substantially the form of Schedule C to the REA Arrangement Agreement.

The Board notes that commercially reasonable efforts will be used by ATCO to gain the REA's consent to grant DEML the right to act as the RRO provider. Further, ATCO considered that this is a commercial matter that can be dealt with by the parties. The Board considers to the extent that any agreements are reached, the REA's have the ability to include reasonable costs as a condition of the agreement. Therefore the Board finds that it will not need to direct ATCO to pay those reasonable expenses to REAs associated with complying with the requirements resulting from this transaction.

The Board also notes the Federation of REAs concern regarding the interpretation of the term "retailer" in ATCO's Retailer T&Cs. The Board notes that in the interim approval of T&Cs attached to Decision 2003-058, the definition of "retailer" did not include REA's. The Board agrees with the Federation of REAs that this matter has been dealt with on an interim basis, and notes that ATCO will have an opportunity to modify the definition of retailer when the T&Cs are finalized. The Board also notes that by letter of October 17, 2003, ATCO Electric indicated that while it has concerns regarding this issue, it would amend the Retailer definition to remove REAs as retailers, until the matter is considered in the forthcoming Phase II application. Therefore, the Board will leave this issue to be dealt with in a future proceeding.

6.2 Aboriginal Issues

Aboriginal groups raised several issues with respect to the sale as they relate to the authority to provide utility service on Treaty Lands.

Views of the Intervenors

Ab-Com

Ab-Com noted that both electric and natural gas service had been extended to aboriginal communities via permits granted under section 28(2) of the Federal *Indian Act*. Ab-Com argued that neither ATCO nor DEML gave serious consideration to the existing permits or the provisions of the *Indian Act*.

Ab-Com argued that ATCO's right to acquire and sell energy on or to customers on a reserve by means of pipes and wires and to collect money for such service is the essential part of operating a utility business on a reserve. It is prohibited by the *Indian Act* for a permit holder to transfer away certain of these essential components without consent or approval. Further, Ab-Com argued that any disposition of rights in a permit can not be granted or assigned without consent of the Minister, Chief and Council.

Ab-Com proposed that ATCO could reserve to itself the rights of a self-retailer for purposes of aboriginal communities. Other arrangements could be negotiated to allow aboriginal communities to maintain the integrity of applicable permits until alternative arrangements could be negotiated.

Ab-Com considered that the proposed transaction was not in their interest for a number of reasons:

- Permits were granted to ATCO or its predecessors for $1 for the purpose of carrying out the business of supplying energy. It is now proposed that these Permits can be stripped and parts sold for $130 a head without compensation.
- ATCO promises to deliver more energy choices to Albertans, but the Application simply allows the withdrawal of ATCO from the obligation of providing retail services on the reserve to be replaced by DERS without consent.
- DEML cannot do merchandising activity without the Bands license approval or By-law approval (section 81(n) *Indian Act*).

For these reasons, Ab-Com argued that First Nations should be exempted from this transaction.

Ermineskin Cree Nation

Ermineskin Cree Nation argued that EUB approval may sanction illegal activity of utility companies on treaty land. These approvals harm the collective interests of Ermineskin Cree Nation members. Further, the EUB has not received authority to regulate any type of economic activity on treaty land.

Ermineskin Cree Nation requested that the EUB respect the position put forward by Ermineskin Cree Nation with respect to alleged illegal activities of utility companies on First Nations land and the Treaty obligations of the governments of Canada.

Ermineskin Cree Nation proposed that the EUB rule on the Application as follows:

a) The approval of the transfer of the retail assets from ATCO to Direct Energy be examined in light of recent developments with the Government of Alberta, in particular, their commitment to work more closely with First Nation Governments on matters affecting the use of First Nation land.

b) That ATCO and/or Direct Energy provide the financial resources necessary for the Ermineskin Cree Nation to prepare properly for negotiations on future arrangements with either party.

c) The approval of the transfer be conditional upon the finalization of land use arrangements and/or appropriate permits/licenses have been obtained from the Ermineskin Cree Nation by both parties.

d) That a time frame of six months be allotted to these two companies to ensure the Chiefs of the Confederacy of Ermineskin Cree Nation First Nations have endorsed these arrangements to their satisfaction.

Views of ATCO

ATCO noted that in their separate submissions, the Aboriginal communities made statements regarding the *Indian Act* and the relevance of its provisions to these proceedings. ATCO considered that these provisions have no application to the current circumstances. ATCO also stated that this view was confirmed by the Federal Government Department that was responsible for administration of this legislation.

Views of the Board

The Board notes that both aboriginal parties raised the issue of jurisdiction regarding the activities of utility companies on native reserves. The Board notes that section 28(2) of the *Indian Act* states:

> 28(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

The Board also notes that the land related rights extended under these permits with respect to the use of the lands, including rights-of-way, access rights and rights with respect to the installation and maintenance of facilities, are remaining with ATCO and are not being transferred to DEML. The Board is therefore not convinced that the approval of this transaction impacts existing permits given that ATCO will continue to be the entity that requires access to Indian lands.

6.3 Cost Tracking

During the hearing, the Board questioned ATCO as to whether or not it would be relatively easy to track and follow incremental costs resulting from the transaction and the segregation of the distribution system within the ATCO utilities and the regulated retail function in Direct.

Views of the Intervenors

AUMA/CE

AUMA/CE noted that DEML supported ATCO's view that the costs could not be tracked once the transaction was approved. AUMA/CE submitted that it was important to keep track of costs to ensure that the real increase in costs is solely due to the separation of the retail business from the distribution business. If ATCO and DEML were directed to track costs, reasons for any increases could then be identified with less difficulty.

Consumer Group

The Consumer Group noted that DEML was opposed to cost tracking. The Consumer Group considered that cost tracking was relevant to customers to ensure there was no harm today and in the future arising from this transaction, given that they would face a significant increase in costs.

DEML

DEML noted that the issue of whether costs under the new market structure should be tracked against costs that would have been incurred without separation. DEML argued that once the Board discharges its responsibility in approving prudent costs and expenses for regulated retail service providers and distributors, a comparison of those costs to what otherwise would have been the costs if separation had not occurred is neither relevant nor practical. DEML was opposed to any obligation that would require the tracking of costs.

Views of the Board

The Board considers that cost tracking can be a useful exercise, particularly when carried out within the confines of a single organization. The Board notes that the provision of regulated retail service will be transferred to DEML if this Application is approved. Given the transfer, the Board considers that it would be difficult to track costs between two organizations with different organizational structures and cost drivers.

The Board also notes the testimony of ATCO that it would be difficult to track costs that are no longer being incurred.[33] Therefore, the Board considers that it will not require costs to be tracked.

6.4 Hearing Costs

Views of the Intervenors

AUMA/CE

AUMA/CE noted ATCO's position in the hearing that ATCO and DERS share 50% of the hearing costs, and ATCO customers pay the remainder through the hearing cost account. ATCO suggested that customers should bear the costs of deregulation and restructuring since they will be the ones who reap the benefits. AUMA/CE argued that if customers are going to bear any of the hearing costs for the sale Application, they should also receive some of the proceeds. If customers receive a significant portion of the sale proceeds, AUMA/CE submit a proportionate amount of hearing costs should be allocated to them.

Calgary

Calgary considered that all costs incurred including regulatory costs should be construed as part of the costs of the sale transaction and as such should be borne entirely by the shareholders of ATCO. Calgary also notes ATCO's observation during the hearing that hearing costs in these types of proceedings are usually allocated to shareholders, which is fair.

Consumer Group

The Consumer Group argued that if the Application is approved as filed, customers will receive increased costs and diminished levels of service. Fairness dictates that ATCO shareholders should bear the hearing costs.

Views of ATCO

ATCO changed its position from that stated during the hearing and argued that since the subject proceedings arise out of regulatory applications the regulated utilities are required to file, the total approved hearing costs for the subject transfer applications should be recovered from distribution customers. This treatment also recognizes that these proceedings are part of the transition to customer choice.

ATCO considered that Calgary confused the costs associated with bringing forth the current Transfer Applications (as required by the legislation) with the transaction costs associated with completing the underlying business deal. ATCO stated that it would not seek to recover such transaction costs in rates. However, these costs are clearly distinguishable from hearing costs, which are properly recoverable from customers.

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[33] Tr. p. 818, lines 5-12

Views of the Board

The Board notes that ATCO's management have made a decision to exercise its legislated right to transfer the obligation of providing regulated service to a third party. This decision and resulting agreements were made without input from customers; as a result, both ATCO and DEML were in complete control of structuring the associated transactions for which Board approval is sought. The Board has also sanctioned the entire proceeds of the transaction going to ATCO shareholders. Accordingly, given that the Application arises as a result of a decision of the ATCO management to sell the retail business and to appoint DERS as the provider of the regulated rate and default supply functions and given the nature of benefits flowing to the ATCO shareholder, the Board considers it appropriate that 100% of the Board approved costs associated with these proceedings will be allocated to ATCO's shareholders.

6.5 ATCO Electric Terms and Conditions of Service

ATCO Electric requested amendments to both its Terms and Conditions for Distribution Service Connections (Wires T&C) and Terms and Conditions for Distribution Access Service (Retailer T&C) as part of the Application. ATCO Electric provided a summary of the amendments required to its Wires T&C and its Retailer T&C in the Application. ATCO Electric noted that, in general, the changes to the Retailer T&C are due to the following:

- recognize the performance of the RRT function by a party other than ATCO Electric;
- amend the Cut off for Non Payment Policy to recognize that ATCO Electric will no longer supply the RRO; and
- clarify certain processes and procedures.

The changes to the Wires T&C are due to the following:

- recognize the performance of the RRT function by a party other than ATCO Electric;
- amend wires credit and collection policy; and
- ensure consistency with Retailer T&C.

Views of the Board

The Board notes that section 6.1 of the proposed Retailer T&C states the qualifications that retailers must fulfill before ATCO Electric will provide Distribution Access Service to the Retailer. The Regulated Rate Provider is included in the definition of Retailer for the purposes of the Retailer T&C. Section 6.1(d) of the proposed Retailer T&C states that the Retailer must "satisfy the credit requirements of the Company as set forth in Article 11 hereof;". Article 11 describes the prudential requirements of the retailers.

The Board notes that section 8(1) of the *DT Regulation* states that:

> An owner must require a retailer to provide a security deposit before the owner provides service to the retailer under the owner's distribution tariff.

The *DT Regulation* defines an owner as the owner of an electric distribution system. In this case the owner is ATCO Electric. A retailer, according to the definition in the EUA, does not include a retailer who provides service to eligible customers under a regulated rate tariff. Therefore DERS is not included in the definition of a retailer for the sake of section 8(1).[34] The Board therefore finds that, with consideration to the *DT Regulation*, it is inappropriate for ATCO Electric to require DERS to provide the prudential requirements as described in Article 11 of the proposed Retailer T&C. The Board will therefore revise the wording in section 6.1(d) of the Retailer T&C as follows:

> (d) the Retailer, with the exception of the Regulated Rate Provider, must satisfy the credit requirements of the Company as set forth in Article 11 hereof;

The Board accepts the proposed changes to the Wires T&C and the Retailer T&C as proposed by ATCO Electric with the exception of:

- the change respecting the inclusion of REAs in the definition of a Retailer as discussed in an earlier section; and
- the change to section 6.1(d) of the Retailer T&C as noted above.

The Board finds that the other changes proposed by ATCO Electric were necessary to recognize the changes that result from the transfer of the retail business to DERS and the appointment of DERS as the RRT provider. Therefore the Board approves the Wires T&C as attached in Appendix 3 of this Decision and approves the Retailer T&C as attached in Appendix 4 of this Decision.

7 SUMMARY OF BOARD DIRECTIONS

This section is provided for the convenience of readers. In the event of any difference between the Directions in this section and those in the main body of the Decision, the wording in the main body of the Decision shall prevail.

1. The Board considers that it could best achieve an appropriate balance of these concerns by monitoring the activity with respect to customer service once the transaction is completed. In this manner, the Board should be able to react quickly to problem areas that may develop. The Board therefore directs ATCO to put arrangements in place that will provide the following information to the Board on a quarterly basis. This information shall be provided for three years following the close of the transaction. This monitoring will be done in addition to any other reporting that may be required as a result of the Board's other processes on Quality of Service Measures. However, the Board considers that, once the Board's Quality of Service Measures are implemented, either ATCO or DERS can request relief from

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[34] EUA, sections 1(1)(uu) and 1(1)(tt)

any of the following measures if they are duplicated in the Board's Quality of Service Measures initiative. ATCO will be responsible to ensure that the appropriate reporting is received by the Board from ATCO Gas, ATCO Electric and DERS. ATCO shall not be required to provide DERS information directly to the Board if DERS elects to provide the required information directly to the Board for the stipulated period. 28

2. Therefore the Board directs DERS to prepare a policy on how it will assess who has access to the billing envelope for the provision of natural gas service and the price that it will charge for this access. DERS must provide this policy to the Board and registered Intervenors within 30 days of the close of the transaction with ATCO. 34

3. Therefore the Board finds that the application by ATCO to transfer the retail business of ATCO Electric and ATCO Gas North and ATCO Gas South to DEML is approved subject to any conditions noted in this Decision. 43

4. In conjunction with this approval, the Board directs DERS to file, with the Board, within six months of the close of the sale, a report indicating that any account balances transferred from ATCO to DERS have transferred so that the closing balance of ATCO equals the opening balance of DERS. This report should be verified by an auditor as to its accuracy. The report should include both energy and non-energy deferral accounts that are transferred, and any customer related deposits. 43

5. Further, the Board directs ATCO to notify the Board of: 43
   - the closing date for the transaction, when the date is known 43
   - the date that DERS will become the provider of the DRT and RRT services; and 43
   - the date that DEP begins operations. 43

6. The Consumer Group also noted that security deposits could be at risk for attachment by other creditors of DEML. The Board notes the concern raised by the Consumer Group, however the Board is aware that other utility providers in Alberta currently do not have mechanisms in place to protect security deposits. However, as DEML is a new entity in the utility market in Alberta, the Board considers that it is appropriate to further review this matter in a future rate proceeding. Therefore the Board directs DEML to review the issue of protection of security deposits and to provide the Board and Intervenors with a recommended policy at the time of its next rate application. 63

8 ORDER

IT IS HEREBY ORDERED THAT, SUBJECT TO THE CONDITIONS CONTAINED HEREIN:

(1) The transfer of the Electricity Assets as defined in the Electricity Assets Transfer Agreement by ATCO Electric to Direct Energy Regulated Services, a division of Direct Energy Marketing Limited, is approved.

(2) The appointment of Direct Energy Regulated Services to perform the Regulated Rate Tariff function on behalf of ATCO Electric is approved.

(3) The ATCO Electric 2003 Regulated Rate Option Tariffs are terminated upon the date that Direct Energy Regulated Services assumes the role of the Regulated Rate Tariff service provider.

(4) The ATCO Electric Terms and Conditions for Distribution Service Connections are approved as attached in Appendix 3 of this Decision, effective upon the date that Direct Energy Regulated Services assumes the role of the Regulated Rate Tariff service provider.

(5) The ATCO Electric Terms and Conditions for Distribution Access Service are approved as attached in Appendix 4 of this Decision, effective upon the date that Direct Energy Regulated Services assumes the role of the Regulated Rate Tariff service provider.

(6) The transfer of the Gas Assets as defined in the Gas Assets Transfer Agreement by ATCO Gas North and ATCO Gas South to Direct Energy Regulated Services, a division of Direct Energy Marketing Limited is approved.

(7) The appointment of Direct Energy Regulated Services to perform the Default Supply Provider function on behalf of ATCO Gas North and ATCO Gas South is approved.

(8) The ATCO Gas North and ATCO Gas South Gas Cost Recovery Rates are terminated upon the date that Direct Energy Regulated Services assumes the role of the Default Supply Provider.

Dated in Calgary, Alberta on December 4, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

B. T. McManus, Q.C.
Presiding Member

J. I. Douglas, FCA
Member

Wayne K. Taylor

W. K. Taylor
Acting Member

APPENDIX 1 – HEARING PARTICIPANTS

Principals and Representatives (Abbreviations Used in Report)	Witnesses
ATCO Electric Ltd. (ATCO Electric) ATCO Gas North and ATCO Gas South (ATCO Gas) L. Keough K. Illsey	G. Constantinescu D. Jones J. Beckett S. Parhar R. Trovato
Direct Energy Marketing Limited (DEML) K. Miller	P. Massara R. Hemstock
Alberta Urban Municipalities Association and City of Edmonton (AUMA/CE) R. McCreary	
City of Edmonton (Edmonton) K. Follett	
Public Institutional Consumers of Alberta (PICA) N. McKenzie	
Federation of Alberta Co-ops Ltd. and Gas Alberta Inc., Alberta Association of Municipal Districts and Counties, Alberta Rural Utilities Association, Prairie Power Ltd., Alberta Federation of REAs (Consumer Group) T. Marriott	G. Schilberg
Alberta Federation of REAs (Federation of REAs) K. Sisson M. Keyes	
City of Calgary (Calgary) R. Meronek K. Saxberg	M. Ketchum R. Higgin R. Low
Lennox Inc., Heating Refrigeration and Air Condition Institute of Canada, Mechanical Contractors Association of Alberta, Sheet Metal Contractors Association of Alberta (HVAC) J. Smellie G. Nettleton	

Principals and Representatives (Abbreviations Used in Report)	Witnesses
Consumers Coalition of Alberta (CCA) J. Wachowich	
Aboriginal Communities and St. Michael's Extended Care Society (Ab-Com) A. O. Ackroyd	
Alberta Irrigation Projects Association (AIPA) H. Unryn	
AltaGas Utilities Inc. (AltaGas) F. Martin R. Jeerakathil	
Ermineskin Cree Nation M. Smallboy	
John Murray in his own stead	

Board Panel
- B. T. McManus, Q.C., Presiding Member
- J. I. Douglas, FCA, Member
- W. K. Taylor, Acting Member

Board Staff
- B. McNulty, Board Counsel
- L. J. Bayda
- C. Burt
- D. R. Weir
- W. Vienneau

APPENDIX 2 – ABBREVIATIONS

ANCA or Aquila	Aquila Networks Canada (Alberta) Ltd.
Asset Sale Transactions	Electricity Assets Transfer Agreement and the Gas Assets Transfer Agreement
ATCO	ATCO Electric and ATCO Gas
ATCO Electric	ATCO Electric Ltd.
ATCO Gas	ATCO Gas and Pipelines Ltd.
Board or EUB	Alberta Energy an Utilities Board
Code of Conduct Regulations	*Code of Conduct Regulation*, AR 160/2003 under the *Electric Utilities Act* and *Code of Conduct Regulation*, AR 183/2003 under the *Gas Utilities Act*
DEML	Direct Energy Marketing Limited
DEP	Direct Energy Preferred
DERS	Direct Energy Regulated Services
DGA	Deferred Gas Account
DGS Regulation	*Default Gas Supply Regulation*, AR 184/2003
DSP	Default Supply Provider
DT Regulation	*Distribution Tariff Regulation*, AR 162/2003
EATA	Electricity Assets Transfer Agreement
EESAI	EPCOR Energy Services (Alberta) Inc
Electric Code Regulation	*Code of Conduct Regulation*, AR 160/2003 under the *Electric Utilities Act*
EUA	*Electric Utilities Act*, S.A. 2003, c. E-5.1
Gas Code Regulation	*Code of Conduct Regulation*, AR 183/2003 under the *Gas Utilities Act*
Gas RRR Regulation	*Roles, Relationships and Responsibilities Regulation*, AR 186/2003 under the *Gas Utilities Act*
GATA	Gas Assets Transfer Agreement
GCRR	Gas Cost Recovery Rate
GRA	General Rate Application
GTA	General Tariff Application
GUA	*Gas Utilities Act*, R.S.A. 2000, c. G-5
MS Agreement	Master Service Agreement
MSA	Market Surveillance Administrator
PIPEDA	*Federal* Personal Information Protection and Electronic Documents Act
PUB Act	*Public Utilities Board Act*, R.S.A. 2000, c. P-45
RDS Regulation	*Regulated Default Supply Regulation*, AR 168/2003
REA	Rural Electrification Association
Retailer T&C	Terms and Conditions for Distribution Access Service
RRO	Regulated Rate Option
RRO Regulation	*Regulated Rate Option Regulation*, AR 45/2000
RRT	Regulated Rate Tariff
Separation Cost Provisions	Section 5(1) of the *RDS Regulation*, section 5 of the *DT Regulation*, and section 10 of the *Natural Gas Billing Regulation*
T&Cs	Terms and Conditions
TransAlta	TransAlta Utilities Corporation

UFG	Unaccounted For Gas
UNCA	UtiliCorp Networks Canada (Alberta) Ltd.
Wires T&C	Terms and Conditions for Distribution Service Connections

APPENDIX 3 – TERMS AND CONDITIONS FOR DISTRIBUTION SERVICE CONNECTIONS (WIRES T&C)

"Appendix 3 Wires
TCs.doc"

(Consists of 95 pages)

ATCO Electric

TERMS AND CONDITIONS
FOR
DISTRIBUTION SERVICE CONNECTIONS
(WIRES T&C)

EUB Decision ______________

Effective: ______________
Supercedes: July 14, 2003

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ARTICLE 1 – PREAMBLE

In accordance with the provisions of the *Electric Utilities Act* ("EUA") and the Regulations made thereunder ("Regulations"), ATCO Electric Ltd. ("ATCO Electric") in its role as a wire owner will carry out the functions necessary to furnish electric facilities to end-use Customers in its service area to enable Customers to purchase electricity for that person's own use from a Retailer. These Terms and Conditions are intended to govern the relationship between ATCO Electric and Customer(s) that require a Service Connection to the Company's electric distribution system. These Terms and Conditions will also govern the relationship between ATCO Electric and Retailer(s) or any other person whom the Customer has assigned to act on its behalf in its dealings with ATCO Electric, regarding the provision of wire service on its electric distribution system.

These Terms and Conditions serve as a companion to the Terms and Conditions for Distribution Access Service which are intended to enable Retailers to acquire access to the Company's electric distribution system for the purposes of allowing them to sell electricity directly to end-use Customers. An end-use Customer may also act as a Self-Retailer by carrying out Retailer functions to obtain Electricity Services solely for its own use.

The service provided by ATCO Electric hereunder is regulated by the Alberta Energy and Utilities Board ("EUB"), and parties having any inquiries or complaints regarding these Terms and Conditions may direct such inquiries or complaints directly to ATCO Electric or to the Board. These Terms and Conditions have been approved by the EUB.

ARTICLE 2 – DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following words and phrases, whenever used in these Terms and Conditions, the Electric Service Tariff or an application, contract or agreement for service, shall have the meanings set forth below:

"Act" means the *Electric Utilities Act*, S.A. 2003, c. E-5.1, as amended from time to time;

"Agent" means a person who deals and performs functions including, but not limited to, customer choice transactions with the Company on behalf of a Self-Retailer or Retailer;

"Available Company Investment" means the available investment in dollars as set forth in Schedule B hereto;

"Backout Electric Service Agreement" means an agreement to cover for the capital and other expenditures made by the Company for the provision of a Service Connection before construction and before the Customer's Electric Service Agreement is completed.

Billing Demand" means the demand upon which billing to a Customer is based;

"Board" or "EUB" means the Alberta Energy and Utilities Board established under the *Alberta Energy and Utilities Board Act*, R.S.A., 2000, c.A-17, as amended from time to time;

"Business Day" means any day other than Saturday, Sunday or a holiday as defined in the *Interpretation Act*.

"Company" means ATCO Electric Ltd. or its successor;

"Connected Load" means the sum of the capacities or ratings of the electric energy consuming apparatus connected to a supplying system;

"Contract Demand" means the contract demand established between the Customer and the Company as follows:

(a) *"Distribution Contract Demand"* – (DCD) the demand level in kW used to establish the Available Company Investment ($) in Customer related distribution facilities. The demand level will also establish the Customer's minimum monthly distribution bill. The DCD is established by the Company in consultation with the Customer;

(b) *"Transmission Contract Demand"* – (TCD) the demand level in kW used to establish the Company's contribution to the TA in Customer related transmission facilities;

"Contract Term" means the period of time during which the Customer continues to take service under these Terms and Conditions until service is no longer required.

"Customer" means a person, firm, partnership, corporation, REA, organization or association (including, without limitation, individual members of any unincorporated entity) served by the Company, but does not include a public utility or any member of an REA;

"Customer Contribution" means the sum of the Distribution Contribution and the Transmission Capital Costs (Contribution) that the Customer shall pay to the Company to install the Facilities necessary to provide a Service Connection to the Customer.

"Customer Extension Costs" means the costs to extend service to a Customer and are defined as follows:

(a) *"Distribution Capital Costs"* – the estimated costs of materials, labor, expenses, allocated overhead, and any other costs incurred by the Company in extending service to a Customer, related to distribution voltages of 25 kV and lower;

(b) *"Transmission Capital Cost (Contribution)"* – the portion of the Company's contribution to the TA, as established by the TA, which the Company incurs to extend service to a particular Customer;

"Customer Information" means Customer name, Customer telephone number, Customer mailing address, site contact name, site contact phone number and other safety related information required to provide safe electric service to Customers;

"Customer Usage Information" means information regarding the historical electricity consumption of a Customer and includes:

- Site ID;
- Read Date;
- Net Measured Energy (kW.h); and if available
- Net Measured Demand (kW); and
- Net Measured Demand (kV.A)

"Default Supplier" means a Retailer appointed pursuant to section 3 of the RRR.

"Demand" means the maximum rate at which electric energy is delivered by the Company (expressed in kilowatts, kilovoltamperes or other suitable unit) at a given instant or averaged over any designated period of time;

"Developer" means the person or party who has requested an underground service;

"Distribution Access Service" means the service required to transport electricity to Customers by means of an electric distribution system;

"Distribution Contribution" means the Distribution Capital Costs less the Available Company Investment;

"Distribution Tariff" means a distribution tariff prepared by the Company in accordance with the *Distribution Tariff Regulation, A.R. 162/2003*, as amended from time to time;

"Dwelling" means a private residence provided with sleeping and cooking facilities intended for domestic use and in which the occupants live as a single housekeeping unit that is not part of a Multiple Dwelling;

"Electric Service Agreement" means an agreement for the provision of a Service Connection pursuant to these Terms and Conditions, between the Company and a Customer, in the form attached as Schedule D hereto;

"Electricity Services" means the services associated with the provision of electricity to Customers, including the exchange of electricity through the power pool, making financial arrangements to manage financial risk associated with the pool price, distribution access service, system access service, system support services, billing, metering, maintaining information systems, and any other services specified in the regulations;

"Electric Service Tariff" means a Distribution Tariff prepared by the Company;

"Energy" means electric energy (expressed in kilowatt hours);

"Facilities" means a physical plant (including, without limitation, transmission and distribution lines, transformers, meters, equipment and machinery);

"Force Majeure" means circumstances not reasonably within the control of the Company, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or accident to equipment, mechanical breakdowns, the intervention of federal, provincial, state or local government or from any of their agencies or boards, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise;

"Generating Customer" means a Customer with on-site generating equipment that is interconnected with the Company's distribution facilities;

"Incremental Interconnection Costs" means the costs of materials, labor, expenses and any other direct costs incurred by the Company to allow a Generating Customer to make use of the distribution system.

"Initial Term" means the initial period of time specified in the Customer's Electric Service Agreement in which the Customer is bound to certain obligations and benefits for the reasons set out in these Terms and Conditions;

"In-service Date" means the date on which the Customer specifies service is to be available or the date the service is actually available, whichever is later;

"Interconnected System" means those portions of the Company's facilities which are connected with the electrical systems of other electric utilities in the Province of Alberta;

"Isolated System" means those portions of the Company's facilities which do not form part of the interconnected system;

"Load" means the demand and energy delivered to or required at any Point of Service;

"Luminaire" means an outside lighting unit fitted to a pole and consisting of a lamp and parts designed to distribute the light including reflector, bulb, lens, ballast and controls;

"Multiple Dwelling" means a building containing more than one dwelling which share all or part of a Service Connection;

"Municipality" means a city, town, village, summer village, municipal district or specialized municipality, a town under the *Parks Towns Act* or a municipality formed by special Act, and includes a Metis Settlement;

"Point of Delivery", or "POD" means the point at which electrical energy is transferred from the TFO's Transmission Facility to a distribution system and where the electric energy so transferred is measured;

"Point of Service" means the point at which the Company's service conductors are connected to the conductors or apparatus of a Customer;

"Power Factor" means the ratio of the highest metered kilowatt demand in a billing period to the highest metered kilovoltampere demand in that same billing period;

"Power Pool" means the scheme operated by the persons appointed under section 9(1)(b) and (c) of the Act for the dispatch and exchange of electric energy and financial settlement for the exchange of electric energy;

"REA" means incorporated rural electrification association;

"RRR" means the *Roles, Relationships and Responsibilities Regulation, A.R. 169/2003*, as amended from time to time;

"Retailer" means a person who sells or provides Electricity Services directly to Customers and who is entitled to enroll Customers for Distribution Access Service under the Company's Terms and Conditions for Distribution Access Service, and includes Default Supplier, the person for whom the Company has made arrangements to provide the Regulated Rate Tariff to eligible Customers, and Self Retailers;

"Self-Retailer" means a person carrying out Retailer functions to obtain electricity services solely for its own use;

"Service Connection" means the facilities required to physically connect the Customer's facilities to the Company's distribution system to permit the Customer to obtain Distribution Access Service;

"Site" means a unique end-use Point of Service, being the finest level at which settlement recognizes retailer assignments, and receives consumption data;

"Site ID" means a unique identification number assigned by the Company to each unique end-use Point of Service;

"System Controller" means the person(s) appointed by the Power Pool Council under section 9(1)(c) of the Act to carry out the system control function of the Power Pool;

"Transmission Administrator" means the person(s) appointed by the Lieutenant Governor in Council under section 21 of the Act;

"Transmission Connected Customer" means for the purpose of exemption from distribution charges as defined in the price schedules:

(a) a Customer whose Point of Service is at a transmission voltage (72kV and above); or

(b) a Customer whose plant site is contiguous with a transmission facility which is under the jurisdiction of the Transmission Administrator, and takes service directly from the transmission facility, or through a transformer which is directly connected to the transmission facility.

2.2 Conflicts

(a) If there is any conflict between a provision expressly set out in an Order of the Board and these Terms and Conditions, the Order of the Board shall govern.

(b) If there is any conflict between a provision expressly set out in these Terms and Conditions, as may be amended from time to time, and an Electric Service Agreement, the express provision of these Terms and Conditions shall govern, as of their effective date.

2.3 Headings

The division of these Terms and Conditions into sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

2.4 Schedules and Appendices

The following schedules and appendices are attached to and form part of these Terms and Conditions:

- Schedule A - Standard Supply Specifications
- Schedule B - Available Company Investment
- Schedule C - Conditions of Underground Service
- Schedule D - Electric Service Agreement
- Schedule E - Backout Electric Service Agreement
- Schedule F - Non-Discretionary Service Charges
- Schedule G - Distribution Contract Buydown Costs and Contribution Refund Credits

ARTICLE 3 – GENERAL PROVISIONS

3.1 Board Approval

These Terms and Conditions have been approved by the Board. The Company may amend these Terms and Conditions by filing a notice of amendment with the Board. Included in the notice to the Board shall be notification of which Customer groups are affected by the amendment and an explanation of how affected Customers will be notified of the amendments. The amendment will take effect 60 days after such notice is filed, unless the Board otherwise directs.

3.2 Electric Service Tariff

The Company's Electric Service Tariff is available for public inspection during normal business hours at the business offices of the Company and at the offices of the Board and can be accessed at ATCO Electric's website at: **www.atcoelectric.com**. These

Terms and Conditions form part of the Distribution Tariff and are established pursuant to Section 2 of the Distribution Tariff Regulation.

3.3 Effective Date

These Terms and Conditions come into force on __________. Whenever the Company files notice of an amendment to these Terms and Conditions, or when the Board approves an amendment to these Terms and Conditions, revisions will be issued, with the effective date of the amendments indicated thereon.

3.4 Terms and Conditions Prevail

(a) These Terms and Conditions, as amended from time to time, apply to the Company and to every Customer to which the Company provides a Service Connection. These Terms and Conditions also govern the relationship between the Company and Retailer or any other person whom the Customer has assigned to act on its behalf in its dealings with ATCO Electric regarding the provision of wires service on its electric distribution system.

(b) The application for a Service Connection, the entering into an Electric Service Agreement, the use by the Customer of a Service Connection to obtain Electricity Services or the payment by the Customer of an account rendered by the Company in relation to a Service Connection shall constitute acceptance by the Customer of these Terms and Conditions.

(c) No agreement can provide for the waiver or alteration of any part of these Terms and Conditions unless such agreement is first filed with and approved by the Board.

3.5 Customer Guide to New Extensions

The Company has developed the Customer Guide to New Extensions to help Customers understand the normal practices of the Company. The Customer Guide will be updated, from time to time, to reflect changes to the electric utility industry, or the changing needs of the Company's Customers. The Company is committed to follow practices in the Customer Guide. However, as these practices will likely not cover every situation that arises, it may be necessary to deviate from the Customer Guide to meet unique needs in certain circumstances.

3.6 Web Site

The Company has developed a secure web site on the internet which contains certain Customer Usage Information which the Customer can access and use for its business purposes only. The terms and conditions to access the web site are set out in the Customer Use Agreement, as set out in the Customer Guide to New Extensions.

3.7 Ownership of Facilities

(a) The Company remains the owner of all Facilities necessary to provide a Service Connection to the Customer, unless an agreement between the Company and Customer specifically provides otherwise.

(b) Payment made by Customers for costs incurred by the Company in installing facilities does not entitle Customers to ownership of any such facilities, unless an agreement between the Company and the Customer specifically provides otherwise.

3.8 Fees and Other Charges

The Company will provide all standard services hereunder pursuant to the Distribution Tariff. All additional, supplementary or extra non-discretionary services provided by the Company to a Customer will be charged a separate rate or fee, such as those included, without limitation, in Schedule F herein. Payment for these services shall be in accordance with the provisions of these Terms and Conditions.

ARTICLE 4 – ESTABLISHMENT OF SERVICE

4.1 Application for Service Connection

(a) To enable the Company to provide the requested service, applicants for service shall supply information regarding the location of the premises to be served, the Customer's connected load and preferred supply conditions and the manner in which the Service Connection will be utilized, credit information or reference if necessary and any other information that may be required by the Company. The Customer shall refer to the Company's Customer Guide to New Extensions for customary information requirements.

(b) Upon receipt of the required information, the Company will advise the applicant of the type and character of the Service Connection it will furnish to the Customer, and any special conditions that must be satisfied.

4.2 Method of Application

4.2.1 Form and Acceptance of Application

(a) All Customers must be of legal age to contract for service with the Company. The Company reserves the right to verify the identity of the Customer and the accuracy of the information provided and to require the Customer to sign an application in writing on forms provided by the Company.

(b) For commercial and industrial Customers, written acceptance specifying the Customer has agreed to these Terms and Conditions must be received by the Company before construction of the service will proceed.

(c) A Customer may be required to sign the Company's Backout Electric Service Agreement, in the form attached as Schedule E hereto, before construction of the Service Connection will proceed.

4.2.2 *Application by Retailer or Other Person*

A Retailer or any other person acting as an agent of a Customer may apply for a Service Connection on behalf of the Customer. The Retailer or agent must provide the Company, in a form acceptable to the Company, verifiable authorization from the Customer to make the application.

4.3 Establishment and Re-establishment of Credit or Deposits

4.3.1 *Establishment of Credit*

(1) The Company shall not require a deposit from a Customer unless the Customer falls under the circumstances defined in section 4.3.2. herein.

(2) All Customers will be required to follow the security requirements as defined by the Customer's Retailer.

(3) All Customers who choose to self-retail shall refer to the Terms and Conditions for Distribution Access Service for their prudential requirements.

(4) The Company reserves the right to request Customers to establish credit for any amounts to be provided by the Customer, including but not limited to idle service or Distribution Contribution, under these Terms and Conditions.

4.3.2 *Re-establishment of Credit*

(a) Former Customers with an Outstanding Balance

An applicant who has been a Customer of the Company and who is indebted to the Company will be required to re-establish credit by paying all delinquent bills and depositing the amount prescribed herein.

(b) Delinquent Customer

A Customer whose electric service has been disconnected for nonpayment of bills for service may be required, before service is restored, to establish credit by paying all delinquent bills, the reconnection fee and depositing the amount prescribed herein.

4.3.3 *Amount of Security Deposits*

The amount to be deposited will be determined by the Company at the time of the service application.

4.3.4 *Refunds of Security Deposits*

A security deposit is refunded or credited to the Customer's account with interest when:

(1) the Customer's Service Connection is disconnected, other than for default in payment of accounts, and the Customer has paid all amounts owing to the Company; or

(2) the Customer has satisfactorily established credit by paying all bills on or before the due date of the said bill, for twelve (12) consecutive months.

4.3.5 *Interest of Security Deposits*

Interest on each Customer's security deposit held by the Company will be calculated at the rate specified from time to time in The Residential Tenancies Act, but not less than 2.5% per annum. Interest will be credited to the Customer's account annually or when the deposit is refunded.

4.3.6 *Use of Security Deposits*

If a Customer fails to pay an amount billed, and collection action has been initiated by the Company, the Company may apply all or any portion of a Customer's security deposit toward payment of the outstanding amounts, including interest. When the Company has taken this step, the Customer may be required to pay to the Company the amount deducted from the Customer's security deposit. Upon termination of a Service Connection, the Company may apply all or any portion of a Customer's security deposit, including interest, toward payment of any amount due and owing by that Customer.

4.4 Rejection of Application

The Company may, without limitation, reject any applicant's request for a Service Connection when:

(a) the Customer does not have currently in force all permits or other authorization that may be required for the installation of the Service Connection as defined in section 4.6; or

(b) the Company determines that a previous account held by the Customer is in arrears with the Company; or

(c) the Customer fails to provide a security deposit or letter of credit from a suitable financial institution in form acceptable to the Company; or

(d) the Company determines that the form of the Electric Service Agreement is not appropriate for the Service Connection due to its unique nature and the Customer refuses to enter into an alternate form of agreement acceptable to the Company; or

(e) any representation made by the applicant or the Customer to the Company for the purpose of obtaining a Service Connection is, in the Company's opinion, fraudulent, untruthful or misleading; or

(f) the Customer has not, when requested by the Company to do so, provided a signed written application for a Service Connection, Electric Service Agreement or Backout Electric Service Agreement; or

(g) the proposed loads, in the Company's opinion, have unusual characteristics that might adversely affect the quality of service supplied to other Customers, the public safety, or the safety of the Company's personnel or the Company's facilities or equipment.

4.5 Electric Service Agreement

(a) A Customer may be required by the Company to sign an Electric Service Agreement in respect of a Service Connection, as set out in Schedule D. The Electric Service Agreement shall be signed by the Customer and not by its Agent.

(b) In the absence of a signed Electric Service Agreement, the supplying of a Service Connection by the Company and the acceptance thereof by the Customer shall be deemed to constitute an agreement by and between the Company and the Customer for delivery, acceptance and payment for electric service under the Company's applicable price schedules and Terms and Conditions.

(c) If any provision of the Customer's Electric Service Agreement, or the application thereof, is to any extent held invalid or unenforceable, the remainder of its Electric Service Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

4.6 Approvals

The Customer for a Service Connection shall be responsible for obtaining all permits, certificates, licenses, inspections, reports, and other authorizations necessary for the installation and operation of the Service Connection. The Company shall not be required to commence or continue installation or operation of a Service Connection unless and until the Customer has complied with the requirements of all permits, certificates, licenses, inspections, reports and other authorizations, and all right-of-way agreements, and all Company requirements applicable to the installation and operation of the Service Connection.

4.7 Temporary Service

(a) Where the Company reasonably believes that a requested service will be temporary, it may require the Customer requesting the service to pay the Company in advance of a Service Connection, the estimated cost of facilities plus the estimated cost of installation and removal of facilities necessary for the desired service, less the value of the salvaged material.

(b) Where duration of service is to be less than one month, the Customer may be required to advance a sum of money equal to the estimated bill for service.

4.8 Information and Requirements for Service

4.8.1 Distribution Service Connections

Upon request, the Company shall provide to the Customer information on the method and manner of making Service Connections. Such information may include a copy of the Company's Customer Guide to New Extensions, a description of the Service Connection available, location of entrance facilities and metering equipment, and Customer and Company responsibilities for installation of facilities.

4.8.2 Distribution Access Service

For Customers requesting information on Distribution Access Service, the Company will make available the following information:

(a) notification and informational materials to consumers about competition and consumer choices;

(b) the Company's Terms and Conditions for Distribution Access Service;

(c) direct Customers, on request, to a source where they may obtain the current list of licensed Retailers maintained in accordance with the *Fair Trading Act*, RSA 2000, c. F-2 *("Fair Trading Act")*. The Company is under no obligation to assure the accuracy of this list.

4.8.3 Customer Usage Information

(a) The Company shall provide standard Customer Usage Information to a Customer that has an Electric Service Agreement in place with the Company upon request for:

(1) the 12-month period preceding the date of the request, or

(2) for any shorter period for which the Company has collected that information.

(b) An Agent or consultant, acting on behalf of a Customer, may request Customer Usage Information by obtaining and submitting to the Company the authorization from the Customer in a form as set out in the Customer Guide to New Extensions.

(c) The information referred to in part (a) above, with the exception of interval data, will be provided by the Company at no additional cost.

(d) Customers with interval metering will have its Customer Usage Information posted to the Company's secure web site for access. Requests for Customer Usage Information that is above the information posted on the Company's secure web site will be provided by the Company at no additional cost for requests made once per year per account. The Company reserves the right to assess a charge for additional Customer Usage Information requests as set forth in Schedule F hereof.

(e) The Customer must submit a fully completed, executed Customer Use Agreement, as set out in the Customer Guide to New Extensions, to access its account information over the internet via the Company's secure website.

4.9 Application of Price Schedules

(a) The Company will make Customers aware of the various price schedules under which the Company provides service to Customer rate classes. The Company will endeavor to apply the applicable price schedule which is most favorable to the Customer, providing the price schedule applies to the service requested by the Customer, the Customer is eligible for the requested service, and that application of the requested price schedule does not have an adverse impact on other Customers of ATCO Electric. The Company shall not be required to refund the difference in charges under different price schedules for any past period during which the Customer did not request service under an alternate price schedule that may have been available to such Customer.

(b) Various riders and options are also applicable to the service as specified in the Distribution Tariff approved from time to time by the Alberta Energy and Utilities Board (AEUB).

(c) Subject to the above, where the Customer's service requirements change so that some other price schedule(s), riders and options may apply to the service, upon the receipt of a written request from the Customer, the Company will advise the Customer of its eligibility for service under the alternate price schedule, and the Company will change the Customer's billing accordingly.

(d) A Customer may elect to have service billed on any other price schedule applicable to that Customer's service requirements, subject to the above conditions. Any change shall not be effective until the next complete billing period. An election under this section may not be made more than once in any 12-month period, unless the Customer's service requirements change, and such election will apply to all arrangements the Customer has with the Company if the Service Connection is billed on more than one price schedule.

(e) In each circumstance, the Company may perform an investment contribution calculation to determine whether any adjustments are required to the Customer's contribution amount to recognize the different levels of company investment which apply to each price schedule.

(f) In addition to payments for electric service, the Customer (or Retailer) is required to pay the Company the amount of any tax or assessment levied by any tax authority on electric service delivered to the Customer.

(g) Should a dispute arise between the Company and a Customer with regards to the Customer's eligibility to switch rates, the Company will normally bring the dispute before the Board for resolution. This does not preclude the Customer's ability to bring the same dispute before the Board. Switching will not be allowed before the Board renders a decision.

4.10 Connection Fee

(a) When a residential Customer is connected for the first time at a service location, whether it is a new or existing service location, the residential Customer will pay a non-refundable connection fee as defined in Schedule F herein.

(b) For non-residential Customers, the actual costs including, without limitation, the meter connection costs, account setup costs, and the initial meter read costs will be charged to the non-residential Customer at the time of construction. A fee, as specified in Schedule F, will apply thereafter to new non-residential Customers connecting to the existing service location.

ARTICLE 5 – SERVICE REQUIREMENTS AND FACILITIES

After the Customer has complied with the Company's application and deposit requirements and has been accepted for service by the Company, has obtained all required permits and/or inspections indicating that the Customer's facilities comply with local construction, safety standards or regulations, and has enrolled with a Retailer, the Company shall schedule that Customer Site for Service Connection.

5.1 Customer Provided Facilities and Requirements

5.1.1 Protection of the Company's Equipment

The Customer shall furnish and maintain, at no cost to the Company, the necessary space, housing, fencing, barriers, and foundations for the protection of the facilities to be installed upon the Customer's premises. If the Customer refuses, the Company may at its option furnish and maintain, and charge the Customer for furnishing and maintaining, the necessary protection. Such space, housing, fencing, barriers and foundations shall be in conformity with applicable laws and regulations and subject to the Company's specifications and approval.

5.1.2 Power Factor

A Customer shall design, install and operate the Customer's facilities in such a manner as to maintain a Power Factor of not less than 90%. The Company may require any Customer not satisfying this Power Factor requirement to furnish, install, and maintain, at no cost to the Company, such corrective equipment as the Company may deem necessary under the circumstances.

5.1.3 Compliance with Requirements and Use of Service Connection

The Customer will ensure that its facilities comply with the applicable requirements of the Canadian Electrical Code and with any other technical guidelines that may be issued from time to time by the Company. The Customer shall not use its Service Connection in a manner so as to cause interference with any other Customer's use of a Service Connection such as abnormal voltage levels, frequency levels and harmonic levels. At the Company's request, the Customer shall take whatever action is required to correct the interference or disturbance at the Customer's expense.

5.1.4 Extensions

A Customer shall not extend or permit the extension of facilities connected to the Company's distribution system beyond property owned or occupied by that Customer for any Point of Service.

ARTICLE 6 – RIGHTS OF WAY AND ACCESS TO FACILITIES

6.1 Easements

At the request of the Company, the Customer shall grant, or cause to be granted, to the Company, without cost to the Company, such easements or rights-of-way over, upon or under the property owned or controlled by the Customer as the Company reasonably requires for the construction, installation, maintenance, repair, and operation of the facilities required for a Service Connection to the Customer and the performance of all other obligations required to be performed by the Company hereunder.

6.2 Right of Entry

The Company's employees, agents and other representatives shall have the right to enter a Customer's property at all reasonable times for the purpose of installing, maintaining, replacing, testing, monitoring, reading or removing the Company's facilities and for any other purpose incidental to the provision of a Service Connection and the Customer shall not prevent or hinder the Company's entry.

6.3 Vegetation Management

The Customer shall permit the Company to manage vegetation on the property owned or controlled by the Customer to maintain proper clearances and reduce the risk of contact with the Company's facilities. The Company shall make reasonable efforts to notify the Customer before such work is performed.

6.4 Interference with Company's Facilities

Customers shall not install or allow to be installed on property owned or controlled by the Customer any temporary or permanent structures that could interfere with the proper and safe operation of the Company's facilities or result in non-compliance with applicable statutes, regulations, standards and codes.

ARTICLE 7 – DISTRIBUTION AND TRANSMISSION EXTENSION

7.1 General Requirements

(a) The Company's Available Company Investment Policy set out in Schedule B will apply to each Service Connection.

(b) Upon an applicant's request for a Service Connection, the Company shall prepare a proposal outlining the estimated cost of the Service Connection and Customer Contribution to be paid by the applicant.

(c) All agreements requiring payment by the Customer or investment by the Company shall be in writing and signed by each party.

(d) The provisions of this section apply to those Customers who, in the Company's judgement, will have a permanent Service Connection with the Company. Customers for temporary service shall be governed by section 4.7 concerning temporary service applications.

(e) The payment, if any, required by section (b) hereof is based on the Company's assumptions respecting the method of construction and the routing of the facilities required to serve the Customer in accordance with the Customer's request for a Service Connection. If the assumed method of construction or routing of facilities is changed for reasons beyond the Company's reasonable control as a result of which the Company would incur costs in excess of those estimated on the basis of such assumptions, then the Customer shall pay to the Company the amount by which the cost of such changed method of construction and/or routing of facilities is estimated by the Company to exceed such costs as originally estimated. The Company will outline the costs in a manner as specified in section (b) hereof and the Customer shall make payment to the Company as set out in the Customer's proposal, provided that in such case the Customer shall have the right to cancel its Electric Service Agreement by paying to the Company all costs then incurred by the Company in respect of the Service Connection requested.

7.2 Determination of Customer Distribution Costs and Contributions

7.2.1 Customer Distribution Extension Costs

The Distribution Capital Costs incurred by the Company in extending service to a Customer may consist of the following:

(a) Local Extension Costs

The local facilities required to extend service for the sole purpose of an individual Customer, plus

(b) Shared Extension Costs

Where a new extension will serve a number of new Customers, an amount that represents a share of the total capital cost of the shared extension as follows:

$$\frac{\text{(Customer's estimated operating load) X (Capital costs of shared new facility)}}{\text{(Total load served by the new facility)}}$$

(c) Upgrading Costs

If the Customer extension requires an upgrade to the Company's facilities, the upgrade costs incurred by the Company may form part of the Customer's extension cost.

(d) Advancement Costs

If a Customer or a well defined group of Customers request the Company to advance the upgrade of existing facilities, the costs of the upgrade including but not limited to, incremental higher costs associated with construction in a season other than what would be normally be done, carrying costs, and higher construction costs associated with additional mobilization and demobilization from advancing the construction of facilities, may be classified as customer-related.

7.2.2 *Distribution Contribution*

(a) If the total Distribution Capital Cost is less than the Available Company Investment specified in Schedule B for the type of service provided, the Customer will not be required to make any contribution. In all other cases, an agreement for payment of the Distribution Contribution must be made between the Customer and the Company before any work on the extension is commenced.

(b) Under no circumstances would the Available Company Investment exceed the Customer Extension Costs except under the terms noted in paragraph 3, Schedule B.

7.3 Determination of Customer Transmission Costs and Contributions

7.3.1 *Customer Transmission Extension Cost*

The Transmission Capital Costs incurred by the Company in extending service to a Customer may consist of the following:

(a) Where a single Customer is served from one Point of Delivery (POD), the Customer's Transmission Capital Cost will be equal to the total contribution made by the Company to the TA.

(b) Where a transmission contribution is incurred by the Company, from the TA, for a new facility that will serve a number of new Customers, the

Transmission Capital Cost for any one of those Customers may equal a share of the total contribution incurred by the Company for shared transmission extension as follows:

$$\frac{\text{(Customer's estimated operating load) X (Company Contribution to TA)}}{\text{(Total load served by the new facility)}}$$

(c) Where a transmission contribution is incurred by the Company, from the TA, for an expansion or extension to existing facilities, which will serve an identifiable Customer(s), the costs of such expansion or extension may be allocated to such Customer(s).

7.3.2 *Transmission Contribution*

If a Transmission Capital Cost is applicable to a Customer, then an agreement for payment of the Transmission Contribution must be made between the Customer and the Company before any work on the extension is commenced.

7.4 Electric Service Agreement Terms

(a) The level in kW used to establish the Available Company Investment shall become the Customer's Distribution Contract Demand and will apply, subject to any changes, for the period of time the Customer takes service under these Terms and Conditions.

(b) The Initial Term of the Customer's Electric Service Agreement shall be effective on the date service is first made available to the Customer's Point of Service.

(c) If the Customer continues to take service beyond the initial term, the Electric Service Agreement remains in effect until terminated by either party in accordance with Article 15 herein.

7.5 Changes in Point of Delivery (POD) Demand

The Company reserves the right to pass through to the Customer any costs from the TA incurred by it as a direct result of:

(a) the Company being required to establish a new POD contract, or increase to the contract demand in an existing POD contract, or

(b) a change in the Customer's service requirements resulting in costs that the Company would not otherwise recover, or

(c) the Customer terminating service, as defined in section 15.2 herein.

7.6 Distribution Contribution Refund

When a Customer provides a Distribution Contribution under section 7.2 to obtain service, the Company will refund a portion of the contribution in the form and manner set out in the Customer Guide to New Extensions.

(a) Change in Distribution Contract Demand:
If the Customer increases the contracted load at the Service Connection to which the Distribution Contribution relates, the Company will refund a portion of the Customer's contribution.

(b) Cost Sharing:
If a new Customer shares a portion or all of the costs of an existing extension the Company will refund a portion of the Customer's contribution based on the amount of extension shared and the ratio of the Customer's operating load to the total operating load. If the original Customer was not required to pay a contribution, the Customer has the right to cost sharing through a lower DCD.

7.6.1 *Time for Payment of Refund*

The refund is payable only if the events in section 7.6 occur within the Initial Term.

7.7 Delay in Taking Service

7.7.1 *Subdivision or Multiple Dwelling Residence*

(a) In circumstances whereby the Company will install Facilities to serve a subdivision or a multiple dwelling residence, and it is determined that service will not be taken within 12 months of the in-service date, the Customer shall pay for the entire cost of the new extension. For each Point of Service in the subdivision or multiple dwelling residence that is energized within five (5) years of the in-service date, the Company will refund the payment for each Point of Service based on the Available Company Investment specified in Schedule B. Otherwise, the Company shall be entitled to retain such payment as compensation for its costs incurred in respect of the Service Connection.

7.7.2 *Non-Subdivision or Non-Multiple Dwelling Residence*

Except in the case of a Customer who requests service under section 7.7.1, if the Service Connection is not energized within 30 days of the in-service date or the Service Connection ceases to be energized, the Company may begin billing the Customer (or the Customer's Retailer) the minimum amount specified in the appropriate price schedule or as specified in the Electric Service Agreement between the Company and the Customer, whichever is greater.

7.8 Underground Subdivision Extensions

Underground subdivision Service Connections shall be undertaken subject to the Terms and Conditions set out in Schedule C.

7.9 Conversion from Overhead to Underground Service

A Customer may request that existing Company facilities be converted from overhead to underground service. The Customer, or any other person who is acting on behalf of a Customer and who provides the Company with verifiable authorization from the Customer, will be charged for all costs incurred by the Company in connection with the conversion, including, without limitation, the following:

(a) the present value of future revenue streams associated with the existing facilities which are being removed, plus

(b) the estimated cost of removing the existing facilities, less the estimated salvage value, plus

(c) the estimated cost for the installation of the new underground facilities, less any applicable company investment as specified in Schedule B.

ARTICLE 8 – SERVICE CONNECTION

8.1 Company Responsibility and Liability

8.1.1 Continuous Supply

The Company shall make all reasonable efforts to maintain continuity of service to its Customers, but the Company cannot guarantee an uninterrupted electricity supply.

8.1.2 Interruption

Without liability of any kind to the Company, the Company shall have the right to disconnect or otherwise curtail, interrupt or reduce service to Customers:

(a) whenever the Company reasonably determines, or when the Company is directed by the System Controller, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's Facilities;

(b) to maintain the safety and reliability of the Company's distribution system; or,

(c) due to any other reason related to dangerous or hazardous circumstances including emergencies, forced outages, potential overloading of the Company's distribution system or Force Majeure.

8.1.3 *Reasonable Efforts*

The Company shall use reasonable efforts to minimize any scheduled curtailment, interruption or reduction to the extent reasonably practicable under the circumstances, to provide the Customer with prior notification of any such curtailment, interruption or reduction to the extent reasonably practicable, and to resume the Customer's Service Connection as promptly as reasonably practicable.

8.1.4 *Company Liability*

Notwithstanding anything to the contrary contained in these Terms and Conditions, the Company shall not be liable for any loss, injury, damage, expense, charge, cost or liability of any kind, whether of direct, indirect, special or consequential nature, (excepting only direct physical loss, injury or damage to a Customer or a Customer's property, resulting from the negligent acts or omissions of the Company, its employees or agents) arising out of or in any way connected with any failure, defect, fluctuation, reduction or interruption in the provision of service by the Company to its Customers. For the purpose of the foregoing and without otherwise restricting the generality thereof, "direct physical loss, injury or damage" shall not include loss of revenue, loss of profits, loss of earnings, loss of production, loss of contract, cost of purchased or replacement capacity and energy, cost of capital, and loss of use of any facilities or property, or any other similar damage or loss whatsoever, arising out of or in any way connected with the failure, defect, fluctuation, reduction or interruption in the provision of service to a Customer.

8.1.5 *Force Majeure*

Should the Company be unable, because of an event of Force Majeure, to provide a continuous supply of energy to a Customer, the Company's responsibilities, so far as they are affected by the Force Majeure, shall be relieved and suspended during the duration of such circumstances and the Company shall not be liable for any failure to perform any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, an event of Force Majeure. Where practical, the Company shall give notice to the affected Customers of such Force Majeure.

8.2 Customer Responsibility and Liability

8.2.1 *Customer Responsibility for Facilities*

The Customer shall be responsible for the installation and condition of all facilities on the Customer's side of the point of service, except Facilities owned by the Company. The Customer shall be responsible for any destruction of or damage to the Company's Facilities located on the Customer's premises where the destruction or damage is caused by a negligent act or omission or willful misconduct of the Customer or anyone permitted by the Customer to be on the premises.

8.2.2 *Customer Liability*

(a) The Customer assumes full responsibility for the proper use of the Service Connection provided by the Company and for the condition, suitability and safety of any and all wires, cables, devices or equipment energized on the Customer's premises or on premised owned or controlled by the Customer that are not the Customer's property.

(b) The Customer shall indemnify and save harmless the Company from and against any claim or demand for injury to persons or damage to property arising out of or in any way connected with the use of the service so long as such injury or damage is not caused by the negligent acts or omissions or willful misconduct of the Company, its employees and agents.

8.2.3 Protective Devices

The Customer shall be responsible for determining whether the Customer needs any devices to protect the Customer's facilities from damage that may result from the use of a Service Connection. The Customer shall provide and install any such devices.

8.2.4 Service Calls

The Company may require a Customer to pay the actual costs of a Customer requested service call if the source of the problem is the Customer's facilities.

8.3 Interference with the Company's Property

No one other than an employee or authorized agent of the Company shall be permitted to remove, operate, or maintain meters, electric equipment and other facilities owned by the Company. The Customer shall not interfere with or alter the meter, seals, or other facilities or permit the same to be done by any person other than the authorized agents or employees of the Company.

8.4 Unauthorized Use

Where the Company determines that there has been unauthorized use of the Service Connection including, but not limited to, meter tampering, unauthorized connection or reconnection, theft, fraud, intentional or unintentional use of energy whereby the Company is denied full compensation for services provided, the Company will bill the Customer (or Retailer) for the Company's estimate of such unauthorized use, including repairs of damage or reconstruction of Company Facilities. Nothing in this section shall limit any other rights or remedies that the Company may have in connection with such unauthorized use.

8.5 Multiple Dwellings

(a) Each individual unit within a multiple dwelling will be served as a separate Point of Service, unless the Company agrees otherwise.

(b) Where the Company and a Customer have agreed that service to a multiple dwelling shall be delivered through a single Point of Service, the applicable general service (non-residential) price schedule will apply to the service.

(c) Where a Customer was, on December 31, 1989, metered through a single Point of Service in respect of more than one unit, the Customer may continue to be metered on that basis until such time as the Customer's load changes or the service conductors and meters serving that Customer are relocated.

8.6 Mobile Homes

(a) Service shall normally be provided to mobile homes through separate Points of Service, based on the applicable residential price schedule.

(b) Service provided to common use areas (e.g. laundry facilities) in a mobile home park shall be separately metered and billed at the applicable general service price schedule.

(c) In mobile home parks or trailer courts where the Company reasonably believes homes are temporary, the Company may elect to provide service only through the Point of Service billed to the mobile home park or trailer court.

8.7 Frequency and Voltage Levels

The Company will make every reasonable effort to supply energy at 60-Hertz alternating current. The voltage levels and variations will comply with the Canadian Standards Association standards and as specified in Schedule A. Some voltage levels set out in Schedule A may not be available at all locations served by the Company.

ARTICLE 9 – GENERATING CUSTOMERS

9.1 Continuous Service

The Company shall make all reasonable efforts to maintain continuity of service to Generating Customers, but the Company cannot guarantee uninterrupted service.

9.2 Planned Outages

(a) Without liability of any kind to the Company, the Company reserves the right to interrupt, discontinue or otherwise place limits on the output of the Generating Customer to allow for repairs and improvements to Company facilities or whenever the Company reasonably determines that such action is necessary to maintain the safety and reliability of its distribution system or in other emergency situations.

(b) The Company shall endeavor to give prior notice to Generating Customers who will have service interrupted or reduced and will endeavor to ensure that such interruptions are short and infrequent as circumstances permit. The contact lists and communication channels will be specified in the operating agreement between the Company and the Generating Customer.

9.3 Company Liability

Notwithstanding anything to the contrary contained in these Terms and Conditions, the Company shall not be liable for any loss, injury, damage, expense, charge, cost or liability of any kind, whether of direct, indirect, special or consequential nature, (excepting only direct physical loss, injury or damage to a Generating Customer or a

Generating Customer's property, resulting from the negligent acts or omissions of the Company, its employees or agents) arising out of or in any way connected with any failure, defect, fluctuation, reduction or interruption in the provision of service by the Company to its Generating Customers. For the purpose of the foregoing and without otherwise restricting the generality thereof, "direct physical loss, injury or damage" shall not include loss of revenue, loss of profits, loss of earnings, loss of production, loss of contract, cost of purchased or replacement capacity and energy, cost of capital, and loss of use of any facilities or property, or any other similar damage or loss whatsoever, arising out of or in any way connected with the failure, defect, fluctuation, reduction or interruption in the provision of service to a Generating Customer.

9.4 Force Majeure

Should the Company be unable, because of an event of Force Majeure, to provide a continuous service to a Generating Customer, the Company's responsibilities, so far as they are affected by the Force Majeure, shall be relieved and suspended during the duration of such circumstances and the Company shall not be liable for any failure to perform any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, an event of Force Majeure. Where practical, the Company shall give notice to the affected Generating Customers of such Force Majeure.

9.5 Generating Customer Responsibilities

(a) The Generating Customer will be responsible for the installation and condition of all facilities on the Generating Customer's side of the Point of Service, except metering or other equipment owned by the Company.

(b) The Generating Customer shall indemnify and save harmless the Company from and against any claim or demand for injury to persons or damage to property arising out of or in any way connected with the use of the service so long as such injury or damage is not caused by the negligent acts or omissions or willful misconduct of the Company, its employees or agents.

(c) The Generating Customer shall be responsible for any damage to Company facilities located on the Generating Customer premises where the damage is caused by the negligent acts or omissions or willful misconduct of the Generating Customer or anyone permitted by the Generating Customer to be on the premises.

9.5.1 *Protective Devices*

(a) The Generating Customer shall be responsible for determining whether it needs any devices to protect its equipment from damage that may result from the interconnection to Company facilities. The Generating Customer shall provide and install any such devices.

(b) The Generating Customer will provide the Company with the required documentation and settings for such devices. Where the Company has determined that there are adverse impacts on other consumers or operating processes, the Company can order modifications to these protective systems.

(c) The Generating Customer must obtain written approval from the Company for any modifications to these schemes.

(d) The Generating Customer must use teleprotection signals or other such reliable means to separate the generators from the electric system during islanding conditions.

(e) The Generating Customer shall be responsible for any damages that are caused as a result of failure to safely separate during an islanding situation. Unapproved islanding conditions will be defined by the Company in the operating agreement.

9.5.2 *Service Calls*

The Company may require a Generating Customer to pay the actual costs of a Generating Customer requested service call if the source of the problem is the Generating Customer's own facilities.

9.5.3 *Company Disconnection for Safety Reasons*

The Company may, without notice, disconnect a Generating Customer service where, in the Company's opinion:

(a) the Generating Customer has violated the terms of the operating agreement with the Company; or

(b) the Generating Customer has permitted the wiring of its facilities to become hazardous; or

(c) the wiring of the Generating Customer facilities fails to comply with applicable law; or

(d) the use of the service may cause damage to the Company's facilities or interfere with or disturb service to any other Customer.

The Company will reconnect the service when the safety problem is resolved and when the Generating Customer has provided, or paid the Company's costs of providing, such devices or equipment as may be necessary to resolve such safety problems and to prevent such damage, interference or disturbance.

9.5.4 *Metering and Settlement*

(a) The Generating Customer will be responsible for installing 4-quadrant metering facilities to measure active energy and reactive energy produced by the generator, and consumption of power, active energy and reactive energy, flowing from the distribution system to the Generating

Customer's facilities. The metering facilities shall be in compliance with the standards set by the Company.

(b) At the request of the Company, the Generating Customer shall install additional metering facilities if the Company determines that the existing metering facilities are inadequate or not properly configured to measure the full consumption flowing from the Company's distribution system to the Generating Customer's facilities. The Company reserves the right to install additional metering, at the Generating Customer's cost, as it deems necessary to ensure accurate measurement of consumption from the Company's distribution system.

(c) The power production information must be provided to the Company, the Transmission Administrator and the Power Pool in a format and frequency which is acceptable to these entities. The Company may use the power production information for internal use.

(d) The Generating Customer must provide the Company with consumption information in a form acceptable to the Company whether or not the Generating Customer consumes power from the Company's distribution system.

(e) Upon receipt of a request by the Generating Customer, the Company will install 4-quadrant metering facilities to measure active and reactive energy as identified in part (a). The Company will be responsible to interrogate the meter and perform all settlement transactions with the Transmission Administrator and the Power Pool. The Generating Customer will be provided with consumption and power production information for its internal use. The Generating Customer will be responsible for the costs of providing and installing the metering equipment, and ongoing operating costs as set out in Schedule F herein.

(f) Telemetry is required for all generating units in excess of 5MW in capacity, or where the Company has determined that telemetry is required in order to maintain reliable operation of the distribution system.

9.5.5 *Meter Test*

(a) The Company reserves the right to request meter test information from the Generating Customer.

(b) If metering facilities have been removed for reasons such as, but not limited to, testing or inspection, the Company may estimate the demand and amount of energy supplied, but not registered, at the Point of Service.

(c) The Company may, at any reasonable time, read, inspect, remove and test a meter owned or controlled by the Generating Customer. The Company shall have the right to enter a Generating Customer's property for the purpose of reading, inspecting, testing or removing the meter, and the Generating Customer shall not prevent or hinder the Company's entry.

9.5.6 *Energy or Demand Diversion*

(a) If under any circumstance a Generating Customer prevents a meter from accurately recording the total demand or energy supplied from the Company's distribution system, or the consumption information has been found corrupted, the Company may disconnect the service, or take other appropriate actions to ensure access to accurate meter data.

(b) The Company may then estimate the demand and amount of energy supplied but not registered at the Point of Service. The Generating Customer shall pay the cost of the estimated demand and energy consumption, plus all costs related to the investigation and resolution of the diversion.

9.5.7 *Permits and Agreements*

The Generating Customer shall obtain and provide to the Company copies of all required permits, licenses and authorizations prior to commencement of service or any change in service requirements at any point of interconnection, which includes:

(a) AEUB approval and order to connect; and

(b) acceptance from the local inspection and code enforcement authorities; and

(c) an agreement with the Company which will specify technical and operating requirements if it wishes to operate in parallel operation with; or as supplementary, auxiliary or stand-by service to any other source of electric energy.

9.5.8 *Approvals*

(a) The Generating Customer must obtain written approval from the Company before any modification is made to the Generating Customer's system.

(b) The Generating Customer will be responsible for becoming a Power Pool participant and complying with any Power Pool requirements for any energy delivered to the Power Pool.

(c) The Generating Customer will be responsible for securing all required technical, commercial, or operational arrangements with the Transmission Administrator and/or the System Controller and the Power Pool of Alberta.

(d) The Generating Customer will be responsible for providing technical information to the Company as required. The Company will treat this information as confidential and will not release such information to any other parties without the express and written consent of the Generating Customer.

(e) The Generating Customer will be responsible for operating in compliance with accepted industry operating and maintenance standards as established, from time to time, by the TA and the Company, and as specified in the operating agreement between the Generating Customer and the Company. The Company shall have the right to inspect the Generating Customer's facilities for compliance.

(f) The Company will be responsible for providing technical information to the Generating Customer as required. The Generating Customer will treat this information as confidential and will not release such information to any other parties without the express and written consent of the Company. Information related to distribution system use or modeling of such use, may be restricted in order to respect Customer confidentiality.

9.6 Incremental Interconnection Costs

(a) The Generating Customer will be required to pay all incremental interconnection costs as determined by the Company, to allow the Generating Customer to make use of the distribution system, including:

(1) any costs of connection to the Distribution system, including any cost sharing to load Customers;

(2) any costs to upgrade existing distribution facilities;

(3) an application fee associated with performing engineering estimates, planning, operating or protection studies or any additional or routine

modeling and testing required by the TA and/or the System Controller, as set forth in Schedule F hereto;

(4) any costs of protection, anti-islanding circuitry, communication facilities, telemetry or modification to Distribution or Transmission facilities required to reliably separate the generator from the electric system.

(b) An agreement for payment of the incremental costs must be made between the Generating Customer and the Company before any work on the interconnection is commenced;

(c) The Generating Customer shall be required to pay all replacement costs for all incremental interconnection facilities including the replacement of assets at the end of useful life or replacement due to failure, including but not limited to, elements such as transformers, poles, regulators, capacitors, line conductor, and teleprotection systems.

(d) The Company may provide the Generating Customer with an option to pay for the replacement costs over time as defined in section 9.8.

(h) If the facilities identified in (a) and (b) above are required to provide standby service (Price Schedule D32) to on-site load, the incremental interconnection costs that are payable by the Generating Customer may be offset by the available Company investment as per Schedule B for standby service under Price Schedule D32.

(i) If a new Customer or Generating Customer shares a portion or all of an existing extension, to which the interconnection costs relates, the Company will refund a portion of the Generating Customer's contribution based on the amount of extension shared and the ratio of the Generating Customer's operating load to the total operating load.

9.7 Ownership of Facilities

(a) The Company remains the owner of all interconnection facilities it provides to serve the Generating Customer, unless an agreement between the Company and the Generating Customer specifically provides otherwise.

(b) Payment made by Generating Customers for costs incurred by the Company in installing facilities does not entitle Generating Customers to ownership of any such facilities, unless an agreement between the Company and the Generating Customer specifically provides otherwise.

9.8 Payment Options and Credit Requirements

The Company may provide the Generating Customer with an option to pay for the incremental interconnection costs determined under section 9.6 over time, providing they satisfy the credit requirements listed herein. The payment period will not exceed five years.

(a) Subject to review and reassessment of the creditworthiness of a Generating Customer by the Company from time to time, the Company has established the following minimum financial criteria for Generating Customers requesting to pay for the incremental costs over time. The Generating Customer will be deemed to have met the credit requirements if:

(1) the Generating Customer, affiliate or person which guarantees the financial obligation of the Generating Customer in a manner acceptable to the Company has at least an "A" rating from the Canadian Bond Rating Service or an equivalent rating from a major reputable bond rating service satisfactory to the Company, or

(2) the Generating Customer provides, in a manner acceptable to the Company, a bank guarantee, irrevocable letter of credit, or cash deposits drawn on a Canadian Chartered Bank, trust company, credit union or other lending institution acceptable to the Company.

(b) The Company will secure the following minimum information and supporting documentation prior to entering into a contract with a Generating Customer to conduct a credit risk assessment.

(1) Most recent credit rating report from a recognized rating agency and a list of bank credit and trade references, including address, phone numbers and bank officer.

(2) Audited financial statements for the latest two years (two most recent Annual Report to Shareholders, if applicable).

(3) Description of the corporate structure, including the name of the Chief Executive Officer and Chief Financial Officer.

(4) Legal name, address, phone, and fax numbers of the Generating Customer,

(5) Certificate specifying the names, titles, and specimen signatures of the persons authorized to approve and confirm contracts.

(c) All costs associated with obtaining financial security and meeting prudential requirements are the responsibility of the Generating Customer.

9.9 Incremental Operations and Maintenance Charges (O&M)

(a) The Generating Customer will be required to pay ongoing incremental operation and maintenance charges based on the incremental interconnection costs determined in section 9.6. The annual incremental O & M is calculated as the ratio of annual O & M costs to Gross Rate Base contained in Price Schedule D31 (3.76%). The monthly incremental O & M charge will be as follows:

(3.76%) X Incremental Interconnection Costs

(b) The monthly operations and maintenance charge will apply as long as the Generating Customer takes service and will include the costs of normal preventative and fault maintenance, including replacement of insulators, conductors, fuses, single poles, on going brushing and switching to perform normal preventative maintenance and fault isolation.

(c) Any expenses incurred by the Company to perform switching or isolation at the request of the Generating Customer will be recovered directly from the Generating Customer.

9.10 Incremental Administration and General Charges (A&G)

The Generating Customer will be required to pay ongoing incremental administration and general charges based on the incremental interconnection costs determined in section 9.6. The annual incremental A & G factor will be calculated as the ratio of annual A & G costs to the Gross Rate Base in Price Schedule D31 (4.76%). The monthly A & G charge will be as follows:

$$\frac{(4.76\%) \times \text{Incremental Interconnection Costs}}{12}$$

The monthly A & G charges will apply for as long as the Generating Customer takes service.

ARTICLE 10 – METERS

10.1 Installation of Meters

10.1.1 Provision and Ownership

The Company shall provide, install, and seal one or more meters for the purpose of measuring the Energy delivered to a Customer by way of a Service Connection. Time of use or interval meters and associated communication equipment shall be installed for a Customer who has a connected load exceeding 500 kW. Each meter shall remain the sole property of the Company.

10.1.2 Responsibility of Customer

Each Customer shall provide and install a CSA-approved meter receptacle or other CSA-approved facilities suitable for the installation of the Company's meter or metering equipment.

10.2 Location

Meter locations shall be approved by the Company based on type of service and convenience of access to the meter. Where a meter is installed on a Customer-owned pole, the pole shall be provided and maintained by the Customer as required by the Canadian Electric Code and any other applicable legislation.

10.3 Access to Meters

(a) The Company may, at any reasonable time, read, inspect, remove and test a meter installed on property owned or controlled by the Customer.

(b) Upon written request to the Company, the Customer may access pulse data directly from its interval meter. The Customer Guide to New Extensions sets out the method in which costs are to be recovered.

10.4 Meter Test and Adjustments

(a) The Company may inspect and test a meter at any reasonable time. At the request of the Customer's Retailer, the Company shall arrange for on-site meter verification and if necessary, shall arrange for a meter to be tested by an official designated for that purpose by Measurement Canada or accredited agency as may, from time to time, be designated for this purpose.

(b) If a test determines that the meter is not accurate within the limits set by government standards, the Retailer's bill will be adjusted accordingly subject to section 9 of the Regulated Default Supply Regulation, A.R. 168/2003.

Where it is impossible to determine when the error commenced, it shall be deemed to have commenced three (3) months before the test or the date of the meter installation, whichever occurred later. The Company shall not be liable to the Customer or Retailer for any additional costs that are associated with such metering or meter reading errors.

(c) The Company reserves the right to assess a charge to the Retailer for a meter test, in circumstances where the Company has not been responsible for any metering error, as set forth in Schedule F hereof. This charge will not apply in circumstances where the meter has been tested to be faulty.

10.5 Energy or Demand Diversion

(a) If under any circumstances, a person other than a Company employee, agent or contractor, prevents a meter from accurately recording the total demand or energy supplied, the Company may disconnect the service, or take other appropriate actions to ensure access to accurate meter data.

(b) The Company may then estimate the demand and amount of energy supplied but not registered at the Point of Service. The Retailer shall pay the cost of the estimated demand and energy consumption plus all costs related to the investigation and resolution of the diversion.

10.6 Changes to Metering Equipment

(a) Should a Retailer request or consent to a Customer request for new metering equipment beyond the basic service, the Company shall provide, install, test and maintain the required metering equipment. The metering equipment must be requested in writing by the Retailer and meet the Company's requirements. The

Retailer shall bear the cost of providing and installing the metering equipment, and ongoing operating costs as set forth in Schedule F hereof. For changes to metering equipment on primary distribution voltage levels, the cost of providing and installing such metering equipment and the ongoing operating costs, will be determined on a case by case basis. The metering equipment shall become the property of the Company and will be maintained by the Company. The Company shall complete installation of the metering equipment within thirty (30) days of delivery from the supplier. The Company shall bill the Retailer upon installation, and the Retailer shall pay the Company in full within thirteen (13) business days of receipt thereof. If payment is not received within (13) business days, the Company shall charge interest on the late payment as set forth in Schedule F and section 11.4 hereof.

(b) Should a Retailer request to return the metering equipment to its previous basic form, the Retailer shall bear the cost of removal and installation of the metering equipment.

(c) Upon request by the Retailer or Customer, the Company may provide other metering services, above standard metering service, in its discretion, acting reasonably, and may charge separate fees for such service.

10.7 Totalized Metering

(a) Normally, the Company will issue a separate bill for each Point of Service. When service is provided through multiple Points of Service to a Customer's plant site consisting of centralized processing facilities or product transportation facilities located on contiguous lands leased or owned by the Customer, where such multiple Points of Services are located within a radius of half a mile of each other, the Customer and Company may agree that the demand and the energy at each Point of Service be totalized and only one bill issued for each billing period.

(b) Oilfield pumping service does not meet the above criteria and is therefore not eligible for totalized metering.

(c) The Customer, or the Customer's Retailer, shall pay the incremental metering cost associated with totalized metering.

ARTICLE 11 – RENDERING AND PAYMENT OF BILLS

11.1 Reading and Estimates

(a) Billing will be based on meter readings made by the Company from time to time or on estimates for those billing periods when the meter is not read. The Company reserves the right to assess a charge to the Retailer for additional reads above the Company's standard practices as defined in Schedule F hereof.

(b) For small general service Customers whose load requirements are small, consistent, and can be accurately predicted, the billing demand and energy may be determined, at the sole discretion of the Company, by methods such as but not limited to, from the nameplate rating of the Customer's equipment rather than being metered.

11.2 Proration of Bills

(a) The amount of any initial and final charges, other than consumption based charges, may be prorated, based upon the ratio of the number of days that service was provided to a Customer in the billing period to the total number of days in the billing period.

(b) The Company may elect to change a Customer's meter reading schedule.

(c) Where a meter reading schedule is changed, any charges other than energy, during the transition period between the old and new meter reading schedule, may be prorated based upon the ratio of the number of days that service was provided to a Customer in the transition period to the total number of days in a normal billing period (thirty (30) days).

(d) The Company may elect not to charge a Customer for the billing period if, during that period, demand was five kilowatts or less, service was provided for five days or less and energy consumption was five kilowatt hours or less.

(e) For all new accounts, the Company may add the charges for service provided during the initial period to the bill for the following billing period.

11.3 Payment

(a) The payments for service provided to the Customer under the Company's Price Schedule (and collected by the Retailer, if applicable) shall commence of the earlier of the first billing date after the date upon which the Customer commences taking service, or thirty (30) days after the date that service is made available to the Customer.

(b) The Customer shall pay all amounts required to be paid under these Terms and Conditions upon receipt of a bill for such amounts. Bills shall be deemed rendered, and other notices duly given when delivered to the Customer at the address for service. Failure to receive such bill from the Company will not entitle the Customer to any delay in the settlement of each account, or to any extension of the date after which a late payment charge becomes applicable. Any bill rendered to a Customer for which valid payment has not been received by the date indicated on the bill shall be considered past due. The Company reserves the right to assess a late payment charge as set forth in Schedule F hereof.

11.4 Late Payment Charge

If a Customer defaults or is late in paying its bill, the Company will apply a late payment charge of 1% per month on the amount due. The billing process is as follows: The Company will invoice the Customer each billing cycle for the period prior to the billing cycle. The Customer shall pay the Company on or before the 13th Business Day (17 calendar days) following the Business Day on which the Customer was invoiced. AE applies a short grace period before it applies the late payment charge if it can be demonstrated that the bill was paid on time at the Customer's financial institution. If payment is not received, the Company applies a 1% penalty on the amount due. If the Customer fails to pay the balance on its next billing cycle, a 1% penalty is applied to the balance carried forward (including interest). If an outstanding balance remains on a going-forward basis, the Company will initiate collection action including disconnecting service to the Customer.

11.5 Returned Cheque Fee

The Company reserves the right to assess a service charge in respect of any cheque returned by the Customer's bank for any reason as defined in Schedule F hereto.

11.6 Adjustment of Bills

11.6.1 Billing Error

Should the Retailer dispute any amount owing, the Retailer shall nonetheless pay such disputed amount and subject the dispute for resolution in accordance with these Terms and Conditions. Following resolution of any such dispute, the Company will return any amount found owing to the Retailer forthwith. Subject to section 9 of the Regulated Default Supply Regulation, A.R. 168/2003, the right or ability of either party to dispute a bill for service provided hereunder shall only apply to bills rendered during a period of two (2) years prior to the date of a written notice of such dispute. The Company may assess a charge to the Retailer for reviewing billing disputes, in circumstances where the Company has not been responsible for any billing error as established in Schedule F hereof.

11.6.2 Unauthorized Use

Where the Company determines that there has been unauthorized use of electric service including, but not limited to, meter tampering, unauthorized connection or reconnection, theft, fraud, intentional or unintentional use of energy whereby the Company is denied full compensation for service provided, the Company will bill the Customer's Retailer for the Company's estimate of such unauthorized use.

Nothing in this section shall limit any other rights or remedies that the Company may have in connection with such unauthorized use.

If it is determined that the Customer is not enrolled with a Retailer at the time of the unauthorized use, the Customer will pay all applicable charges including the cost of energy billed to the Company by the Power Pool.

11.7 Peak Metered Demand Waiver

11.7.1 Load Management

The Company will forgive the Customer's distribution peak demand ratchet if that Customer has invested in demand management equipment and complies with the following requirements:

(a) The Customer has demonstrated, to ATCO Electric's satisfaction, that the investment in new equipment was installed solely for the purpose of reducing peak demand. If the Company is unable to determine if the reduction in demand was installed solely for the purpose of reducing demand, the Company or the Customer may contract with an independent third party to assist in the determination. The third party costs shall be the responsibility of the Customer requesting demand ratchet relief.

(b) The Customer provides the information necessary for the Company to determine that the equipment was installed solely for the purpose of demand management.

(c) The Customer is served from shared distribution facilities.

(d) The reduction in demand will result in extended life or capacity of the distribution system and must result in a reduction of forecast Company investment in those facilities.

The Transmission portion of the demand ratchet will be waived if the Company does not continue to incur TA costs associated with that Customer's reduction in demand as a result of diversity at the POD, or if the TA waives the respective transmission demand charge.

11.7.2 *Forgiveness of New Peak Demands*

The Company will forgive new peak demands when:

(a) The Customer's new peak demand is a result of an unscheduled Company power outage which consequently requires a Customer to operate at a load above that considered normal for the Customer's operation in order for that Customer to meet previously determined production requirements.

It is the Customer's responsibility to demonstrate, to the Company's satisfaction, that the increase in demand was a direct result of a need to meet previously determined production requirements. The simultaneous startup of Customer equipment after a power outage resulting in a Customer establishing a new demand will not qualify for forgiveness of the new peak demand.

If the Customer's request for ratchet waiver meets the above criteria, the normal demand will replace the new peak demand for billing purposes; or

(b) The Customer's new peak demand is the result of a reduction in Customer owned generation, or the implementation of emergency procedures at a facility without Customer owned generation, in response to a catastrophic event such as a fire, explosion, or similar disaster at the Customer's facility.

If the Customer's request for demand waiver meets the above criteria, the new peak demand will be used for billing purposes for the billing period during which the new peak demand was established, but it will be waived for ratchet purposes for future bills.

11.7.3 Transmission Demand

If the Company estimates that it has incurred a POD ratchet, as a direct result of providing service to the Customer, the Company will waive the new peak demand if the TA waives the new peak demand to the Company.

ARTICLE 12 – CHANGE IN SERVICE CONNECTION

12.1 Prior Notice by Customer

(a) A Customer shall give to the Company reasonable prior written notice of any change in service requirements, including any change in load to enable the Company to determine whether or not it can supply such revised service without changes to its facilities. A Retailer, or any other person acting as agent for a Customer, who provides the Company with verifiable authorization from the Customer may give such notice to the Company on the Customer's behalf. If the Company receives such notice from a Retailer or other person, the Company may at its option require such notice directly from the Customer.

(b) The Customer shall not change its requirement for a Service Connection without the Company's written permission. The Customer shall be responsible for all damage caused to the Company's distribution system as the result of the Customer changing its requirements for a Service Connection without the Company's permission.

12.2 Changes to Company Facilities

If the Company must modify its facilities to accommodate a change in a Customer's requirements for a Service Connection, subject to section 7.2 of these Terms and Conditions, the Company will modify the Customer's Electric Service Agreement to reflect the additional investment made by the Company.

12.3 Relocation of Company Facilities

The Company may require a Customer to pay all reasonable costs incurred by the Company in relocating any Company facility at the Customer's request. If requested by the Company, the Customer shall pay the estimated cost of the relocation in advance.

ARTICLE 13 – CHANGE IN CONTRACT DEMAND

13.1 Distribution Contract Demand (DCD)

Upon the request of a Customer, the Company will change the level of the Customer's Distribution Contract Demand and calculate the amount of any refund or buy-down cost, subject to the following:

(a) For a Customer which has provided a Distribution Contribution under section 7.2, when a change in the Customer's load requirements results in an increase to the Customer's Distribution Contract Demand level, the Company will calculate a contribution refund based on the increase in the Distribution Contract Demand;

(b) When a change in the Customer's load requirements results in a decrease to the Customer's Distribution Contract Demand level, the Company will calculate a buy-down amount based on the decrease in the Distribution Contract Demand.

(c) For five year contracts for large general service with a Distribution Contract Demand of less than 500 kW, and Oilfield service:

   (i) the rates contained in Schedule G, Tables 1 and 2, will be used to calculate the charge or refund to the Customer. The charge or contribution refund will be the rate ($/kW) in the cell corresponding to the year in which the change is requested and the year in which the original contract was signed, multiplied by the reduction or increase in kW of DCD.

Note: For contracts originally signed prior to 1987, the tables provide rates for contracts of all demand levels (i.e. for less than and greater than 500 kW).

(d) For large general service Customers with a Distribution contract Demand exceeding 500 kW:

(i) the cost or contribution refund amount will be calculated as the present value of the difference between the levelized annuity which pays back the original investment, and the levelized annuity which pays back the new investment, over the remaining assumed life of the asset.

The following formula is used to determine the charge per kW of change in the Distribution Contract Demand:

$$a = I/kW * \left[\sum_{n=1}^{y} \frac{1}{(1+i)^n}\right] * \left[\frac{i(1+i)^x}{(1+i)^x - 1}\right]$$

where:

I/kW = the investment amount per kW in effect at the time of the original contract. The historical investment levels are provided in Schedule G, Table 3.

i = the discount rate at the time of the original contract, which is the weighted average costs of capital (WACC) as published in past Board decisions. The values are provided in Schedule G, Table 4.

x = the assumed life of the facilities. Contracts for Price Schedule 31 use a 25-year life, and contracts for service on Price Schedule 41 use a 15-year life.

y = the remaining assumed life of the facility at the time of the buydown/contribution refund.

The cost or contribution refund = a * (Δ DCD)

where:

(Δ DCD) = change in contract demand (kW)

The contribution refund is payable only if the Customer increases the contracted load within the initial contract term.

13.2 Transmission Contract Demand (TCD)

Upon the request of a Customer, the Company will change the level of the Customer's Transmission Contract Demand subject to the following:

(a) the Customer shall pay any applicable transmission related costs as a result of changes to the Transmission Contract Demand, and

(b) any amount charged to the Company by the TA as a direct result of the Customer's reduction to the Transmission Contract Demand.

A Customer who chooses to increase the level of its Transmission Contract Demand will receive any credits the Company receives from the TA, if any, as a direct result of the increase in the Customer's Transmission Contract Demand.

ARTICLE 14 – SERVICE DISCONNECTS AND RECONNECT

14.1 Disconnection and Idle Service

14.1.1 Temporary Disconnection

Upon the request of the Customer, the Company shall temporarily disconnect any Service Connection provided:

(a) The Customer agrees to pay the idle service charge as determined by the Customer's applicable price schedule (Option F).

(b) The Customer agrees to pay any charges made to the Company by the TA that will not be recovered as a direct result of the Customer's idle service.

(c) Upon the request to restore service the Customer will be responsible for and pay any applicable charges outlined under section 14.4.

(d) If the Service Connection remains disconnected for greater than 12 months, it will be considered permanently disconnected and administered as per 14.1.2 herein.

14.1.2 Permanent Disconnection

(a) If the Customer requests the Service Connection to be permanently disconnected, the Customer billing for that service will be finalized. At the discretion of the Company, the facilities provided by the Company will be removed unless the Customer agrees to pay the idle service charges as determined by the Customer's applicable price schedule (Option F).

(b) If within three (3) years of permanent disconnection the Customer requests the Service Connection be restored, the Customer must pay all the costs associated with the original disconnection, removal of the facilities and restoration of service.

14.2 Disconnection at Request of Retailer

In accordance with section 105(1)(k) of the EUA, the Retailer shall have the right to request that the Company disconnect service to a particular Customer, and Company shall comply with that request, unless such action is inconsistent with Schedule B of the Company's Terms and Conditions for Distribution Access Service.

14.3 Disconnection by the Company

(a) The Company has the right to disconnect electric service to the Customer in a number of circumstances, including but not limited to non-payment of the Company bills or any past due charges by the Customer; evidence of safety violations, energy theft, or fraud, by the Customer; or the Customer failing to meet its obligations under these Terms and Conditions or the Customer's Electric Service Agreement. If a Customer notifies the Company to disconnect service and is enrolled with a Retailer, the Company will complete the request and subsequently notify the Customer's Retailer.

(b) If the disconnect is a result of a safety violation, the Company will reconnect the service when the safety problem is resolved and when the Customer has provided, or paid the Company's costs of providing, such devices or equipment as may be necessary to resolve such safety problem and to prevent such damage, interference or disturbance. The Company may assess a reconnect charge to the Retailer as set forth in Schedule F hereof.

14.4 Reconnect Service

This section applies when the Company is asked to reconnect or restore service to a Customer whose service was previously restricted by a current-limiting device or discontinued (whether at the request of the Customer or not).

Before reconnecting or restoring service, the Customer shall pay:

(a) any amount owing to the Company including written off accounts;

(b) a reconnection charge as defined in Schedule F;

(c) the security deposit, if any, required under section 4.3 herein; and

(d) the minimum monthly charge for each month of disconnection, if service is reconnected within 12 months of disconnection, for all price schedules with the following exceptions:

  (1) Residential (Price Schedule D11) and Small General Service (Price Schedule D21 and D22) service within cities, towns, villages, hamlets, Indian reserves and Metis settlements.

  (2) Private lighting (Price Schedule D63) service.

  (3) Irrigation (Price Schedules D25 and D26) service.

14.5 Removal of Facilities

Upon termination of service, the Company shall be entitled to remove any of its facilities located upon the property of the Customer and to enter upon the Customer's property for that purpose.

ARTICLE 15 – CONTRACT EXIT PROVISIONS

A Customer's Electric Service Agreement remains in effect, subject to the right of either party to terminate such agreement upon thirty (30) days written prior notice being given to the other party.

Upon receipt of such notice, the Company shall read the Customer's meter within a reasonable time, and, shall use all reasonable efforts to read the Customer's meter at the time requested by the Customer. A Customer shall pay for all service provided up to the time of such reading.

15.1 Distribution Related Exit Costs

When a Customer no longer requires service from the Company, and it is within the Initial Term of the Electric Service Agreement, the Customer shall pay the applicable distribution related exit cost, which is defined as:

(a) the present value of future revenue streams associated with the existing facilities being removed; less

(b) the estimated salvage value; plus

(c) the estimated salvage costs.

15.2 Transmission Related Exit Costs

When a Customer no longer requires service from the Company, the Customer shall pay any applicable transmission related exit costs defined as follows:

(a) any costs charged to the Company by the TA, as a direct result of the Customer's termination of service; and

(b) any ongoing costs that the Company incurs from the TA, that will not be recovered as a direct result of the Customer's termination of service.

SCHEDULE A – STANDARD SUPPLY SPECIFICATIONS

The Company's standard supply specifications, which are in accordance with Canadian Standards Association standard CAN_C235-83, are listed in the following section.

Upon request by the Customer, the Company may provide other supply voltages or supply arrangements. If this option is chosen, the Customer will be responsible for all incremental costs associated with provision of service using non-standard supply arrangement or voltages as determined by the Company.

1.0 **Residential:**

(a) **240/120 V – single phase, three wire**

- i) overhead secondary conductors are supplied by the Company
- ii) for services 100 amps or less, underground conductors are supplied by the Company
- iii) for services greater than 100 amps underground conductors are supplied by the Customer

2.0 **Farm:**

(a) **240/120 V – single phase, three wire**

overhead secondary conductors are supplied by the Customer

(b) **208 Y/120 V – three phase, four wire**

overhead or underground secondary conductors are supplied by the Customer

3.0 **General Service:**

(a) **240/120 V – single-phase, three wire**

- i) overhead secondary conductors are supplied by the Company
- ii) underground secondary conductors are supplied by the Customer

(b) 208 Y/120 V – three-phase, four wire

   i) overhead secondary conductors are supplied by the Company for loads up to 150 kV.A
   ii) overhead secondary conductors are supplied by the Customer for loads greater than 150 kV.A
   iii) underground secondary conductors are supplied by the Customer

(c) 480 Y/277 V – three phase, four wire

   i) overhead secondary conductors are supplied by the Company for loads up to 150kV.A
   ii) overhead secondary conductors are supplied by the Customer for loads greater than 150 kV.A
   iii) underground secondary conductors are supplied by the Customer

(d) 600 Y/347 V – three phase, four wire

   i) overhead secondary conductors are supplied by the Company for loads up to 150 kV.A
   ii) overhead secondary conductors are supplied by the Customer for loads greater than 150 kV.A
   iii) underground secondary conductors are supplied by the Customer

(e) 4160 Y/2400 Y – three phase, four wire, 2,000 kV.A to 10,000 kV.A

   i) overhead secondary conductors are supplied by the Customer
   ii) underground secondary conductors are supplied by the Customer

4.0 **Oilfield**

(a) 240/120 V – single phase, three wire

   i) overhead secondary conductors are supplied by the Company
   ii) underground secondary conductors are supplied by the Customer

(b) 208 Y/120 V – three phase, four wire

i) overhead secondary conductors are supplied by the Company for loads up to 150 kV.A

ii) overhead secondary conductors are supplied by the Customer for loads greater than 150 kV.A

iii) underground secondary conductors are supplied by the Customer

(c) 480 Y/277 V – three phase, four wire

i) overhead secondary conductors are supplied by the Company for loads up to 150kV.A

ii) overhead secondary conductors are supplied by the Customer for loads greater than 150 kV.A

iii) underground secondary conductors are supplied by the Customer

(d) 600 Y/347 V – three phase, four wire

i) overhead secondary conductors are supplied by the Company for loads up to 150 kV.A

ii) overhead secondary conductors are supplied by the Customer for loads greater than 150 kV.A

iii) underground secondary conductors are supplied by the Customer

SCHEDULE B – AVAILABLE COMPANY INVESTMENT

1.0 Subject to the provisions of paragraph 2 and 3 of this Schedule B, the maximum Distribution Capital Cost which the Company will incur to extend service to a Point of Service, herein referred to as the "available company investment" will be determined as follows:

(a) **Residential Service (Price Schedule D11):**

$810 per single family dwelling based on an estimated service life of 30 years;

(b) **Small General Service (Price Schedule D21 and D22):**

$290 per kilowatt of Distribution Contract Demand, which shall not be less than five kilowatts, provided that if the estimated life is less than 25 years, then the Available Company Investment will be determined in the manner described in paragraph 2;

(c) **Irrigation Pumping (Price Schedule D25):**

$70 per kilowatt of Distribution Contract Demand, which shall not be less than five kilowatts, provided that if the estimated service life is less than 30 years, then the Available Company Investment will be determined in the manner described in paragraph 2;

(d) **Large General Service/Industrial Price Schedules D31 and D32 with contractual billing demands less than 500 Kilowatts:**

The Available Company Investment level will vary depending on the level of risk in the new extension which is determined by the length of contract the Customer is willing to commit to:

Investment Level	Contractual Period
$35/kW	1 year
$65/kW	2 years
$95/kW	3 years
$120/kW	4 years
$335/kW	5 years

The estimated service life of an extension served under this Price Schedule is 25 years.

The investment will be based on the Distribution Contract Demand, which shall not be less than 50 kilowatts. If the load characteristics of the new service are expected to vary significantly from the norm, then the Available Company Investment will be calculated in accordance with paragraph 2;

(e) Large General Service/Industrial (Price Schedules D31 and D32 with contractual billing demands greater than 500 kilowatts):

The estimated service life of an extension served under this Price Schedule is 25 years.

The first 500 kilowatts of contract demand will be calculated as per 1(d) above. For Initial Term of five years, the Company will invest $215 per kilowatt of Distribution Contract Demand greater than 500 kilowatts. If the Initial Term is shorter than five years, the $215 per kilowatt investment will be prorated as per the table in 1(d) above. If the load characteristics of the new service are expected to vary significantly from the norm, the maximum company investment will be calculated individually for each new extension in accordance with paragraph 2;

(f) **Oilfield and Pumping Power Service (Price Schedule D41):**

The Available Company Investment level will vary depending on the level of risk in the new extension which is determined by the length of contract the Customer is willing to commit to:

Investment Level	Contractual Period
$70/kW	1 year
$130/kW	2 years
$185/kW	3 years
$235/kW	4 years
$565/kW	5 years

The estimated service life of an extension served under this Price Schedule is 15 years.

The investment will be based on the Distribution Contract Demand, which shall not be less than four (4.0) kilowatts. If the load characteristics of the new service are expected to vary significantly from the norm, then the Available Company Investment will be calculated in accordance with paragraph 2;

(g) **Farm Service (Price Schedule D56):**

$325 per kilovoltamperes of Distribution Contract Demand, which shall not be less than three kilovoltamperes, provided, that if the estimated service life is less than 30 years, then the Available Company Investment will be determined in the manner described in paragraph 2;

(h) **Standard Street Lighting (Price Schedules D61 B – Investment Option):**

$1,020 per standard lighting fixture installed by the company and taking service under price schedules D61 (B), provided that if the service life is less than 25 years, then the Available Company Investment will be calculated in accordance with paragraph 2.

For residential or commercial subdivision street lighting, investment will be available only to municipal corporations, and only after the lighting is connected and taking service in the account of the municipal corporation.

(i) **Standard Street Lighting (Price Schedule D61 C – Distribution Investment Option):**

$255 per standard lighting fixture installed by the company and taking services under price schedules D61 (C), provided that if the service life is less than 25 years, then the Available Company Investment will be calculated in accordance with paragraph 2.

For residential or commercial subdivision street lighting, investment will be available only to municipal corporations, and only after the lighting is connected and taking service in the account of the municipal corporation.

(j) **Standard Private Lighting Service (Price Schedule D63 A - Investment Option):**

$1020 per standard lighting fixture installed by the company and taking service under price schedules D63 (A), provided that if the service life is less than 25 years, then the Available Company Investment will be calculated in accordance with paragraph 2.

(k) **Standard Private Lighting Service (Price Schedule D63 E – Distribution Investment Option):**

$255 per standard lighting fixture installed by the company and taking services under price schedules D63 (E), provided that if the service life is less than 25 years, then the Available Company Investment will be calculated in accordance with paragraph 2.

2.0 In circumstances where the life, revenue or load characteristics of an extension are expected to substantially deviate from the norm, the Company will calculate the Available Company Investment based on the expected operating characteristics and length of service for the extension of service in question.

3.0 When a service upgrade or extension is required by a Customer to allow a conversion to electric power and the cost of the service upgrade or extension is less than the Available Company Investment available as determined by paragraphs 1 or 2, then a discretionary expenditure potential exists.

At the Company's discretion, a portion of the difference between the cost of the upgrade or extension and the Available Company Investment may be credited to the Customer subject to all of the following conditions:

(a) the Customer signs a new (5) year electric supply contract at the demand level commensurate with the maximum investment;

(b) the Company is satisfied that the fuel conversion would not have been economically viable for the Customer with any smaller credit;

(c) the Company is satisfied that under prevailing system conditions the additional electric load will result in lower overall unit supply costs for all of the Company's Customers; and

4.0 Reduction in Available Company Investment Level

The Company has the right to withhold the Available Company Investment from a Customer. If the Company withholds the Available Company Investment from a Customer, the Company will send the Customer a written explanation outlining:

(a) the reasons for withholding the investment; and
(b) the Customer's right to appeal the Company's decision to the Board.

A copy of the same written explanation will be sent to the Board.

SCHEDULE C – CONDITIONS OF UNDERGROUND SERVICE

The Company shall extend service by underground conductor lines upon and subject to the following terms and conditions.

(a) No service is then available in the area to be served by such extension, and not less than 25 single family dwellings (or such lesser number as may be agreed to by the Company) will be connected to such extension (the "underground service area"), each of which is situated upon a parcel of land where other single family dwellings in the underground service area are situated.

(b) All permanent service in the underground service area shall be provided exclusively through underground conductor lines;

(c) The Developer shall provide, without cost to the Company, such rights-of-way, easements, utility corridors and transformer locations as the Company may require for the installation, operation and maintenance of such extension, which the developer shall keep free and clear of any buildings, structures, fences, pavement, trees or any other obstructions which may hinder the Company in installing, maintaining or removing its facilities;

(d) The Company shall not be obligated to install such extension until it is reasonably satisfied that the extension will not thereafter be damaged or interfered with, and, in any event, any costs incurred by the Company in relation to the relocation, reinstallation or as a result of damage to such extension shall be paid by the Developer;

(e) Service, for purposes other than residential use and street lighting, may be provided from such extension only with the consent of the Company;

(f) In relation to the underground service, the developer shall provide a meter socket and service conductor protection from sixty centimeters below grade level to the line side of the meter socket and will ensure installation of a service having a 100 ampere capacity;

(g) The Developer shall provide to the Company a certified copy of the registered plan for subdivision and final construction plans showing the location of sidewalks, curbs and gutter, and underground utilities together with such evidence as the Company may reasonably require to the effect that all the rules and regulations applicable to the development have been or will be complied with by the Developer.

(h) Survey stakes indicating grades and property lines shall be installed and maintained by the Developer;

(i) The surface of the ground for a distance of not less than one point five (1.5) meters on each side of the alignments for the underground conductor lines shall be graded by the Developer within eight (8) centimeters of a final grade;

(j) Unless otherwise agreed to by the Company, the Developer shall provide a survey for the location of transformers, street light bases and cable routing, as required; and

(k) Sidewalks, curbs and gutters may be constructed by the Developer but no other permanent improvements shall be made until approved by the Company.

In addition, the service shall be subject to such other conditions as may be specified by the Company from time to time.

SCHEDULE D – ELECTRIC SERVICE AGREEMENT

MEMORANDUM OF AGREEMENT made the (day) of (month), (year)

BETWEEN: **(CUSTOMER NAME)**
(address)
(hereinafter called the "Customer")

- and -

ATCO ELECTRIC LTD., a body corporate with its Head Office in the City of Edmonton in the Province of Alberta ("ATCO Electric" or "Company")

WHEREAS the Customer has requested the Company to provide the Customer with electrical service at a location known as:

(Location of Customer Load)

1. The Customer and the Company agree as follows:

i. Initial Term: ____________________
ii. Customer Contribution (plus applicable GST): ____________________
iii. Allowable Maximum Demand: ____________________
iv: Minimum Contract Demand:
- Distribution Contract Demand ____________________
- Transmission Contract Demand ____________________

v. Minimum Contract Charge (Idle Charge) ____________________
vi. Applicable Price Schedule (s) ____________________
vii. Special Charges (Facilities Charge, etc.) ____________________
viii. Special Arrangements __________ __________
ix. Service Configuration ____________________

2. This Electric Service Agreement is subject to the ATCO Electric Ltd. – Terms and Conditions for Distribution Service Connections ("Terms and Conditions"), as amended from time to time, which are approved by the Alberta Energy and Utilities Board ("EUB").

3. The service provided hereunder is provided for the Customer's use only at the said location and the Customer shall not permit any other person to use such service.

4. The Customer acknowledges that it has reviewed and understands these Terms and Conditions and agrees to be bound by them in all transactions with ATCO Electric.

5. The Customer shall enter into a Customer Use Agreement in the form required by the Company prior to obtaining access to any of the Company's Customer information using a secure web site provided by the Company.

6. No person, whether an employee or agent of ATCO Electric or otherwise, can agree to change, alter, vary or waive any provision of the Terms and Conditions without the express approval of the EUB.

7. The Customer acknowledges that it has been offered a copy of ATCO Electric's Customer Guide to New Extensions and is aware of the policies and business practices of the Company detailed therein.

8. This Electric Service Agreement shall be effective on the date service is first made available, and thereafter shall remain in effect until terminated by either party in accordance with Article 15, as applicable, of the Terms and Conditions.

9. This Electric Service Agreement is subject to all applicable legislation, including the *Electric Utilities Act* and the Regulations made thereunder, and all applicable orders, rulings, regulations and decisions of the EUB or any other regulatory authority having jurisdiction over the Company or the matters addressed herein.

10. This Electric Service Agreement shall enure to the benefit of and be binding and enforceable by the parties hereto and their respective executors, administrators, successors and, where permitted, assigns.

11. If any provision of this Electric Service Agreement, or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Electric Service Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

12. Contacts or Notices required with respect to this Agreement shall be directed as follows:

(a) with respect to the Company's facilities, including technical, safety, health or environment matters:

ATCO Electric Ltd.
10035 - 105 Street Edmonton, Alberta
T5J 2V6

Contact Name: Vice President, Operations
Alternate Contact Name: Senior Manager, Customer Service
Telephone No.: (780) 420-7730 **Alternate:** (780) 420-5596
Telecopier No.: (780) 420-5410 **Alternate:** (780) 420-3111

Customer Name
(address)

Contact Name:
Alternate Contact name:
Telephone No.: **Alternate:**
Telecopier No.: **Alternate:**

(b) with respect to commercial or business matters:

ATCO Electric Ltd.
10035 - 105 Street Edmonton, Alberta

T5J 2V6

Contact Name: Executive Vice President, Regulatory
Alternate Contact Name: Manager, Industrial Sales
Telephone No.: (780) 420-7076 **Alternate:** (780) 420-3415
Telecopier No.: (780) 420-7222 **Alternate:** (780) 420-7222

Customer Name
(address)

Contact Name:
Alternate Contact name:
Telephone No.: **Alternate:**
Telecopier No.: **Alternate:**

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day first above mentioned.

[CUSTOMER NAME]	**ATCO ELECTRIC LTD.**
Per: ______________________	Per: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________

SCHEDULE E - BACKOUT ELECTRIC SERVICE AGREEMENT

THIS AGREEMENT made as of the ---- day of ----------, A.D. **200-** (hereinafter referred to as the *"Effective Date"*)

BETWEEN
{Name of Customer]
{Address of Customer}
{--} (hereinafter called the *"Customer"*)

-and-

ATCO ELECTRIC LIMITED, a corporation incorporated pursuant to the laws of Canada with offices at the City of Edmonton in the Province of Alberta (hereinafter called the *"Corporation"*)

WHEREAS the parties intend to enter into an Electric Service Agreement to provide for a Service Connection to the Customer's Point of Service known as ---------------------------- located at **LSD** ------------------------ in the Province of Alberta (hereinafter referred to as the *"Project"*); and

WHEREAS for the purposes of this agreement, "Service Connection" shall mean the facilities required to physically connect the Customer's facilities to the Company's distribution system to permit the Customer to buy energy from a Retailer, or from the Company if eligible;

WHEREAS for the purposes of this agreement, "Point of Service" shall mean the point at which the Company's service conductors are connected to the conductors or apparatus of a Customer;

WHEREAS the parties acknowledge that the Corporation will incur costs and expenses in connection with the Project prior to the execution of the Electric Service Agreement; and

WHEREAS the parties wish to set out their agreement regarding reimbursement of these costs and expenses incurred by the Corporation in connection with the Project.

NOW THEREFORE the Customer and the Corporation agree as follows:

1. In accordance with the Corporation's proposal of ------------ 200-, attached hereto as Appendix A, the Customer agrees to enter into an agreement with the Corporation for the provision of a Service Connection to the Project (herein referred to as the *"Electric Service Agreement"*). Subject to the provisions of this Agreement, the aforementioned Service Connection shall be provided by -------------- (hereinafter called the *"Full Service Date"*).
2. This Agreement shall be in effect from the Effective Date until the execution of the Electric Service Agreement, whereupon this Agreement shall terminate and shall be of no further force or effect.
3. Upon execution of this Agreement by both parties, the Corporation shall proceed with such activities, including, engineering, procurement of materials and construction of the facilities as it believes necessary to provide a Service Connection to the Project by the Full Service Date (hereinafter called the *"Work"*).
4. If the Corporation determines that it is unable to complete the Work by the Full Service Date it shall so notify the Customer of the deferment and initiate any action necessary to complete the Work as soon as is reasonably possible thereafter.
5. This Agreement may be terminated by the Corporation and the Corporation may thereupon terminate the Work and demand payment in accordance with paragraph 6 hereof:
   (a) if the Customer is in breach of any obligation hereunder and the Customer has not commenced to diligently remedy such breach within ten (10) days of the Corporation giving the Customer written notice specifying the default;
   (b) if the Customer requires the Full Service Date to be deferred to a date which in the opinion of the Corporation would result in the Electric Service Agreement not being economically or commercially reasonable, provided that the Corporation has given the Customer written notice of the Corporation's intent

and within seven (7) days thereafter the Customer has not withdrawn its deferral requirement by written notice to the Corporation;

(c) if the Customer is unwilling or unable to execute, or to close or complete all transactions contemplated in the Electric Service Agreement, in circumstances where the Corporation is willing and able to close or complete such transaction; or

(d) if the Customer no longer requires or desires the Work to be continued or the Project to be provided a Service Connection.

6. In the event the Corporation exercises its right to terminate the Work in accordance with Paragraph 5 hereof, the Customer shall, upon receipt of an invoice therefor, pay the aggregate of all costs and expenses incurred by the Corporation related to the Work and all costs incurred by the Corporation in connection with the termination thereof including, without duplication, but not limited to:
   (a) the cost of all equipment and material, inclusive of any deposit, restocking and cancellation charges;
   (b) the amount payable to any contractor for the supply of labour and miscellaneous materials;
   (c) the cost of engineering, studies, surveying and drafting;
   (d) the fees of any consultant or professional retained by the Corporation;
   (e) the costs incurred in the process of obtaining easements, right-of-way and regulatory approvals;
   (f) the expense of wages and benefits for services performed by the Corporation's employees;
   (g) the carrying charges; and
   (h) the costs incurred to salvage equipment and materials (net of any credit to the Company for reusable equipment and material), and the reclamation of any property used by the Corporation.

7. The Corporation's estimate of the costs and expenses to be incurred by it in connection with the Work and to be reimbursed pursuant to Paragraph 6 hereof are set forth below on a monthly basis as follows:

Cumulative Costs to Month End

Month Ended	Year	Costs and Expenses to be Reimbursed	Month Ended	Year	Costs and Expenses to be Reimbursed
XXXXXX	200X	$XXXXXXX.XX	XXXX	200X	$XXXXXXX.XX
XXXXXX	200X	$XXXXXXX.XX	XXXX	200X	$XXXXXXX.XX
XXXXXX	200X	$XXXXXXX.XX	XXXX	200X	$XXXXXXX.XX
XXXXXX	200X	$XXXXXXX.XX	XXXX	200X	$XXXXXXX.XX
XXXXXX	200X	$XXXXXXX.XX	XXXX	200X	$XXXXXXX.XX
XXXXXX	200X	$XXXXXXX.XX	XXXX	200X	$XXXXXXX.XX

The parties acknowledge and agree that the costs and expenses set out in this Paragraph 7 above are calculated by the Corporation on a best efforts basis and the actual costs and expenses pursuant to Paragraph 6 (a) to (f) may be less than or may exceed such estimates, but shall not exceed such estimates by more than 20%. The parties further acknowledge and agree that such estimates do not include the cost and expenses which may be incurred by the Corporation pursuant to Paragraph 6 (g) and (h) inclusive hereof and payable by the Customer upon terminating the Work pursuant to Paragraph 5 hereof.

8. Upon termination of the Agreement in accordance with Paragraph 5, the Corporation shall use reasonable efforts to minimize the carrying charges and other amounts payable by the Customer by canceling orders for, or returning to the supplier any equipment and material when permitted by a supplier, or by paying cancellation charges for the equipment and material that is reasonable. The Corporation shall exclude any costs which can be reasonably avoided, mitigated or allocated to other work conducted by the Corporation provided it is commercially practicable and permissible to do so.

9. Any payment required to be made by the Customer to the Corporation hereunder shall be made in accordance with an invoice prepared by the Corporation on account of such payment and provided to the Customer.

10. All notices required hereunder shall be in writing and may be given personally, by facsimile or prepaid registered mail addressed to the party for which the notice is intended to its address designated hereunder or to such other address as may be substituted therefor from time to time.

The Customer's address for notice is:

The Corporation's address for notice is:

{ The Customer's Name }
{ Customer's Address }
{————————————}
{————————————}

Attention: {Title of recipient}
Facsimile: {(—–) ———}

ATCO Electric Limited
10035 - 105 Street
P.O. Box 2426
Edmonton, Alberta, T5J 2V6

Attention: Sales Manager
Facsimile: (403) 420-7222

This Agreement shall be governed by the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

{—————Customer's Name—————}

Per:______________________________

____
Name and Title

ATCO ELECTRIC LIMITED

Per:______________________________

____
Name and Title

SCHEDULE F – NON-DISCRETIONARY SERVICE CHARGES

1.0 APPLICABILITY

Applicable to every Customer within the Company's service area.

The service charges outlined herein are also outlined in the Company's Terms and Conditions for Distribution Access Service. This is done to ensure the Customer (or Retailer) is aware of the charges that may apply whether they are reviewing this set of Terms and Conditions or the other. However, the listing of these charges in both sets does not entitle the Company to recovery of these charges under each Terms and Conditions.

2.0 SCHEDULE OF CHARGES

All charges and provisions of the Customer's applicable price schedule shall apply in addition to the following charges for the service being provided:

(a) CONNECTION FEE (for residential Customers)

(1) Connection of electric service to any premises during the Company's regular business hours:

$10.00

(2) Connection of electric service to any premises after the Company's regular business hours, if requested by the Customer:

$ Company's actual costs
($10.00 minimum)

(b) CONNECTION FEE (for non residential Customers)

(1) Connection of electric service to any premises to new Customers connecting to the existing service location during the Company's regular business hours:

$10.00

(2) Connection of electric service to any premises to new Customers connecting to the existing service location after the Company's regular business hours, if requested by the Customer:

$ Company's actual costs
($10.00 minimum)

(c) RECONNECTION AND DISCONNECTION OF SERVICE

(1) Reconnection of electric service to any premises during the Company's regular business hours:

$45.00

(2) Reconnection of electric service to any premises after the Company's regular business hours, if requested by the Customer:

$ Company's actual costs
($45.00 minimum)

(3) Disconnection of electric service to any premises after the Company's regular business hours, if requested by the Customer:

$ Company's actual costs
($45.00 minimum)

(4) Failed attempts to disconnect electric service to any premises during or after the Company's normal business hours:

$ Company's actual costs
($45.00 minimum)

(d) REQUEST FOR INTERVAL METER

Customer request for interval metering (for connected load under 500 kW):

$Capital and Installation Cost of meter, phone line or cell phone plus monthly phone line charges
Cost of Material and Installation plus
$70.00 per month per meter for ongoing operating and maintenance costs

(e) SUPPLEMENTARY METER READS [1/]

(1) Conventional meter reads (AMR):

$6.00 per read per meter

(2) Conventional meter reads (non AMR):

- (i) Meter read to any premises during the Company's normal business hours:

  $45.00 per read per meter

- (ii) Meter read to any premises after the Company's normal business hours:

  $ Company's actual costs
  ($45.00 minimum)

(f) METER DISPUTES

Review of meter disputes, which includes a meter test, in circumstances where the Company has not been responsible for any error:

Self Contained Metering	*$50.00 per evaluation*
Instrument Transformer Metering	*$200.00 per evaluation*

(g) CUSTOMER USAGE INFORMATION [2/]

Interval meter usage data:

Monthly meter usage data	*$200.00 per request per meter*
Hi Low Usage Report by day	*$120.00 per request per meter*

(h) DISTRIBUTION CONNECTED GENERATORS

Application fee:

Synchronous Generator	*$1,500.00 per interconnection site*
Induction Generator	*Under 250 kW: $500.00 per interconnection site*
	Over 250 kW: $1,000.00 per interconnection site
Load Following Generator	*Under 250 kW: $300.00 per interconnection site*
	Over 250 kW: $600.00 per interconnection site

(i) LATE PAYMENT CHARGE

1% per month (12.68% per annum)
(application as set out in section 11.4)

(j) RETURNED CHEQUE FEE

$20.00

---

[1] **Standard Company Meter Reads:**

Interval meters	Daily
Conventional meters (AMR and non AMR type)	Residential and Non Residential - Monthly or Bi-monthly Company Farm and REA - Once per year

[2] **Standard Usage Request**

Interval meters	12 months of 15 minute interval data once per year per meter
Conventional meters	12 months of data once per year per meter

SCHEDULE G - DISTRIBUTION CONTRACT BUYDOWN COSTS AND CONTRIBUTION REFUND CREDITS

Table 1:

Charges/Refunds Applicable to Price Schedule D31 Distribution Contract Demand Changes:

Buydown Year	Original Contract Year							
	All kW Levels 1978	All kW Levels 1979	All kW Levels 1980	All kW Levels 1981	All kW Levels 1982	All kW Levels 1983	All kW Levels 1984	All kW Levels 1985
2002	$17/kW	$34/kW	$43/kW	$62/kW	$75/kW	$77/kW	$81/kW	$84/kW
2003	$0/kW	$19/kW	$31/kW	$51/kW	$66/kW	$69/kW	$75/kW	$78/kW
2004		$0/kW	$17/kW	$37/kW	$55/kW	$60/kW	$67/kW	$72/kW
2005			$0/kW	$21/kW	$41/kW	$49/kW	$58/kW	$65/kW
2006				$0/kW	$23/kW	$36/kW	$48/kW	$56/kW
2007					$0/kW	$21/kW	$35/kW	$45/kW
2008						$0/kW	$19/kW	$33/kW
2009							$0/kW	$18/kW
2010								$0/kW

Buydown Year	Original Contract Year							
	All kW Levels 1986	Up to 1,999 kW 1987	Up to 1,999 kW 1988	Up to 1,999 kW 1989	Up to 1,999 kW 1990	Up to 500 kW 1991	Up to 500 kW 1992	Up to 500 kW 1993
2002	$85/kW	$72/kW	$75/kW	$77/kW	$79/kW	$384/kW	$390/kW	$386/kW
2003	$80/kW	$69/kW	$72/kW	$74/kW	$77/kW	$375/kW	$382/kW	$377/kW
2004	$75/kW	$65/kW	$69/kW	$71/kW	$75/kW	$365/kW	$373/kW	$368/kW
2005	$68/kW	$61/kW	$65/kW	$68/kW	$72/kW	$353/kW	$362/kW	$357/kW
2006	$61/kW	$56/kW	$60/kW	$64/kW	$68/kW	$339/kW	$350/kW	$345/kW
2007	$52/kW	$50/kW	$55/kW	$59/kW	$65/kW	$323/kW	$336/kW	$331/kW
2008	$42/kW	$43/kW	$49/kW	$54/kW	$60/kW	$304/kW	$320/kW	$316/kW
2009	$30/kW	$34/kW	$42/kW	$48/kW	$55/kW	$282/kW	$301/kW	$298/kW
2010	$16/kW	$25/kW	$34/kW	$41/kW	$49/kW	$257/kW	$279/kW	$279/kW
2011	$0/kW	$13/kW	$24/kW	$33/kW	$42/kW	$228/kW	$254/kW	$257/kW
2012		$0/kW	$13/kW	$24/kW	$34/kW	$195/kW	$225/kW	$232/kW
2013			$0/kW	$13/kW	$24/kW	$156/kW	$192/kW	$204/kW
2014				$0/kW	$13/kW	$112/kW	$154/kW	$172/kW
2015					$0/kW	$60/kW	$110/kW	$136/kW
2016						$0/kW	$59/kW	$96/kW
2017							$0/kW	$51/kW
2018								$0/kW

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Charges/Refunds Applicable to Price Schedule D31 Distribution Contract Demand Changes:

Buydown Year	Original Contract Year								
	Up to 500 kW 1994	Up to 500 kW 1995	Up to 500 kW 1996	Up to 500 kW 1997	Up to 500 kW 1998	Up to 500 kW 1999	Up to 500 kW 2000	Up to 500 kW 2001	Up to 500 kW 2002
2002	$285/kW	$291/kW	$309/kW	$312/kW	$314/kW	$317/kW	$320/kW	$323/kW	$335/kW
2003	$280/kW	$287/kW	$304/kW	$308/kW	$311/kW	$314/kW	$317/kW	$320/kW	$332/kW
2004	$274/kW	$282/kW	$300/kW	$304/kW	$307/kW	$311/kW	$314/kW	$318/kW	$330/kW
2005	$268/kW	$276/kW	$294/kW	$299/kW	$302/kW	$307/kW	$310/kW	$315/kW	$327/kW
2006	$260/kW	$270/kW	$288/kW	$293/kW	$297/kW	$302/kW	$306/kW	$311/kW	$323/kW
2007	$252/kW	$263/kW	$281/kW	$287/kW	$291/kW	$297/kW	$301/kW	$307/kW	$319/kW
2008	$242/kW	$254/kW	$273/kW	$280/kW	$285/kW	$291/kW	$296/kW	$303/kW	$315/kW
2009	$231/kW	$245/kW	$265/kW	$272/kW	$278/kW	$285/kW	$290/kW	$298/kW	$310/kW
2010	$219/kW	$234/kW	$255/kW	$263/kW	$269/kW	$278/kW	$283/kW	$292/kW	$304/kW
2011	$204/kW	$222/kW	$243/kW	$253/kW	$260/kW	$269/kW	$275/kW	$286/kW	$298/kW
2012	$189/kW	$208/kW	$230/kW	$241/kW	$250/kW	$260/kW	$267/kW	$278/kW	$291/kW
2013	$171/kW	$192/kW	$216/kW	$228/kW	$238/kW	$250/kW	$258/kW	$270/kW	$283/kW
2014	$150/kW	$174/kW	$199/kW	$214/kW	$225/kW	$238/kW	$247/kW	$261/kW	$274/kW
2015	$127/kW	$154/kW	$180/kW	$197/kW	$210/kW	$225/kW	$235/kW	$251/kW	$265/kW
2016	$101/kW	$130/kW	$159/kW	$178/kW	$193/kW	$210/kW	$222/kW	$239/kW	$254/kW
2017	$71/kW	$104/kW	$134/kW	$157/kW	$175/kW	$193/kW	$207/kW	$226/kW	$241/kW
2018	$38/kW	$74/kW	$107/kW	$133/kW	$153/kW	$175/kW	$190/kW	$211/kW	$228/kW
2019	$0/kW	$39/kW	$76/kW	$105/kW	$129/kW	$153/kW	$172/kW	$195/kW	$212/kW
2020		$0/kW	$40/kW	$75/kW	$103/kW	$129/kW	$151/kW	$176/kW	$195/kW
2021			$0/kW	$40/kW	$72/kW	$103/kW	$127/kW	$155/kW	$176/kW
2022				$0/kW	$38/kW	$72/kW	$100/kW	$131/kW	$154/kW
2023					$0/kW	$38/kW	$71/kW	$104/kW	$130/kW
2024						$0/kW	$37/kW	$73/kW	$102/kW
2025							$0/kW	$39/kW	$72/kW
2026								$0/kW	$38/kW
2027									$0/kW

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Table 2:

Charges/Refunds Applicable to Price Schedule D41 Distribution Contract Demand Changes:

Buydown Year	Original Contract Year						
	1987	1988	1989	1990	1991	1992	1993
2002	$0 /kW	$40 /kW	$74 /kW	$103 /kW	$327 /kW	$379 /kW	$403 /kW
2003		$0 /kW	$39 /kW	$74 /kW	$261 /kW	$323 /kW	$355 /kW
2004			$0 /kW	$40 /kW	$188 /kW	$259 /kW	$299 /kW
2005				$0 /kW	$101 /kW	$185 /kW	$237 /kW
2006					$0 /kW	$99 /kW	$168 /kW
2007						$0 /kW	$88 /kW
2008							$0 /kW

Buydown Year	Original Contract Year								
	1994	1995	1996	1997	1998	1999	2000	2001	2002
2002	$358 /kW	$391 /kW	$439 /kW	$463 /kW	$482 /kW	$502 /kW	$519 /kW	$536 /kW	$565 /kW
2003	$323 /kW	$362 /kW	$411 /kW	$438 /kW	$460 /kW	$482 /kW	$501 /kW	$521 /kW	$550 /kW
2004	$285 /kW	$328 /kW	$380 /kW	$409 /kW	$434 /kW	$460 /kW	$480 /kW	$503 /kW	$533 /kW
2005	$241 /kW	$289 /kW	$344 /kW	$377 /kW	$406 /kW	$434 /kW	$457 /kW	$483 /kW	$514 /kW
2006	$192 /kW	$245 /kW	$303 /kW	$341 /kW	$373 /kW	$406 /kW	$431 /kW	$461 /kW	$493 /kW
2007	$135 /kW	$195 /kW	$256 /kW	$300 /kW	$337 /kW	$373 /kW	$402 /kW	$435 /kW	$469 /kW
2008	$72 /kW	$138 /kW	$204 /kW	$254 /kW	$296 /kW	$337 /kW	$370 /kW	$407 /kW	$442 /kW
2009	$0 /kW	$74 /kW	$144 /kW	$202 /kW	$250 /kW	$296 /kW	$334 /kW	$375 /kW	$412 /kW
2010		$0 /kW	$77 /kW	$143 /kW	$198 /kW	$250 /kW	$293 /kW	$338 /kW	$379 /kW
2011			$0 /kW	$76 /kW	$140 /kW	$198 /kW	$247 /kW	$298 /kW	$341 /kW
2012				$0 /kW	$74 /kW	$140 /kW	$195 /kW	$251 /kW	$299 /kW
2013					$0 /kW	$74 /kW	$137 /kW	$199 /kW	$252 /kW
2014						$0 /kW	$73 /kW	$141 /kW	$199 /kW
2015							$0 /kW	$75 /kW	$140 /kW
2016								$0 /kW	$73 /kW
2017									$0

Table 3:

Historical Investment Levels

Price Schedule D31

	First Block kW	First Block	Second Block
1977	-	$120 /kW	$120 /kW
1978	-	$120 /kW	$120 /kW
1979	-	$120 /kW	$120 /kW
1980	-	$100 /kW	$100 /kW
1981	-	$110 /kW	$110 /kW
1982	-	$110 /kW	$110 /kW
1983	-	$110 /kW	$110 /kW
1984	-	$110 /kW	$110 /kW
1985	-	$110 /kW	$110 /kW
1986	-	$110 /kW	$110 /kW
1987	1999	$90 /kW	$240 /kW
1988	1999	$90 /kW	$240 /kW
1989	1999	$90 /kW	$240 /kW
1990	1999	$90 /kW	$240 /kW
1991	500	$430 /kW	$220 /kW
1992	500	$430 /kW	$220 /kW
1993	500	$430 /kW	$220 /kW
1994	500	$310 /kW	$200 /kW
1995	500	$310 /kW	$200 /kW
1996	500	$325 /kW	$210 /kW
1997	500	$325 /kW	$210 /kW
1998	500	$325 /kW	$210 /kW
1999	500	$325 /kW	$210 /kW
2000	500	$325 /kW	$210 /kW
2001	500	$335 /kW	$215 /kW
2002	500	$335 /kW	$215 /kW

Price Schedule D41

1985	$160 /hp
1986	$160 /hp
1987	$160 /hp
1988	$160 /hp
1989	$160 /hp
1990	$160 /hp
1991	$490 /hp
1992	$490 /hp
1993	$490 /hp
1994	$520 /kW
1995	$520 /kW
1996	$550 /kW
1997	$550 /kW
1998	$550 /kW
1990	$550 /kW
2000	$550 /kW
2001	$565 /kW
2002	$565 /kW

Table 4:

Historical Weighted Average Cost of Capital

1977	16.45%
1978	16.46%
1979	17.94%
1980	20.19%
1981	22.93%
1982	25.89%
1983	21.76%
1984	20.51%
1985	19.02%
1986	16.98%
1987	16.81%
1988	16.37%
1989	15.93%
1990	16.30%
1991	15.68%
1992	15.31%
1993	12.70%
1994	13.24%
1995	13.80%
1996	13.41%
1997	13.14%
1998	12.60%
1990	12.14%
2000	12.17%
2001	12.78%
2002	10.23%

APPENDIX 4 – TERMS AND CONDITIONS FOR DISTRIBUTION ACCESS SERVICE (RETAILER T&C)

"Appendix 4 Retailer TCs.doc"

(Consists of 58 pages)

ATCO Electric

TERMS AND CONDITIONS
FOR
DISTRIBUTION ACCESS SERVICE
(RETAILER T&C)

EUB Decision ________________

Effective: __________
Supercedes: July 14, 2003

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ARTICLE 1 – PREAMBLE

In accordance with the provisions of the *Electric Utilities Act* ("EUA") and the Regulations made thereunder ("Regulations"), after 31 December 2000, ATCO Electric Ltd. ("ATCO Electric") will, for certain Customers, act solely as a wire services provider which will not be responsible for providing electricity directly to these end-use Customers. In its role as a wire services provider ATCO Electric will enable Retailers to acquire access to its electric distribution system for the purposes of allowing them to sell electricity directly to end-use Customers. An end-use Customer may also act as a Self-Retailer by carrying out retailer functions to obtain electricity services solely for its own use.

These Terms and Conditions are intended to apply to the relationship between ATCO Electric, as a wire services provider and all Retailers or any party who will be acting as an Agent on behalf of the Retailer for transactions, including, but not limited to, retail billing and load settlement. These Terms and Conditions will also govern the relationship between ATCO Electric and Customer(s) for whom the Retailer or any another party is acting as an Agent in its dealings with ATCO Electric. These Terms and Conditions serve as a companion to the Terms and Conditions for Distribution Service Connections which are intended to govern the relationship between ATCO Electric and Customer(s), or any other person whom the Customer has assigned to act on its behalf in its dealings with ATCO Electric, regarding the provision of wire service on its electric distribution system.

These Terms and Conditions outline the rules that Retailers and Agents must follow to engage in customer choice transactions with the Company.

The service provided by ATCO Electric hereunder is regulated by the Alberta Energy and Utilities Board ("EUB"), and parties having any inquiries or complaints regarding these Terms and Conditions may direct such inquiries or complaints directly to ATCO Electric or to the Board. These Terms and Conditions have been approved by the EUB.

ARTICLE 2 – DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following words and phrases, whenever used in these Terms and Conditions or a Retail Service Agreement, shall have the meanings set forth below:

"Act" means the *Electric Utilities Act*, S.A. 2003, c. E-5.1, as amended from time to time;

"Agent" means a person who deals and performs functions including, but not limited to, customer choice transactions with the Company on behalf of a Self-Retailer or Retailer;

"Board" or "EUB" means the Alberta Energy and Utilities Board established under the *Alberta Energy and Utilities Board Act*, R.S.A., 2000, c. A-17, as amended from time to time;

"Business Day" means a business day is any day other than Saturday, Sunday or a holiday as defined in the *Interpretation Act*.

"Company" means ATCO Electric Ltd. or its successor;

"Customer" means a person purchasing electricity for that person's own use from a Retailer;

"Customer Choice Guide" means the guide prepared by the Company which describes the business processes for the transactions between the Company and the Retailer in relation to the provision of Service under these Terms and Conditions;

"Customer Information" means Customer name, Customer telephone number, Customer mailing address, site contact name, site contact phone number and other safety related information required to provide safe electric service to Customers;

"Customer Usage Information" means information regarding the historical electricity consumption of a Customer and includes:

- Site ID;
- Read Date;
- Net Measured Energy (kW.h); and if available
- Net Measured Demand (kW); and
- Net Measured Demand (kV.A)

"Default Supplier" means a Retailer appointed pursuant to section 3 of the RRR.

"Distribution Access Service" means the service required to transport electricity to Customers by means of an electric distribution system;

"Distribution Tariff" means a distribution tariff prepared by the Company in accordance with the *Distribution Tariff Regulation, A.R. 162/2003*, as amended from time to time;

"Electricity Services" means the services associated with the provision of electricity to Customers, including the exchange of electricity through the power pool, making financial arrangements to manage financial risk associated with the pool price, distribution access service, system access service, system support services, billing, metering, maintaining information systems, and any other services specified in the regulations;

"Facilities" means a physical plant (including, without limitation, transmission and distribution lines, transformers, meters, equipment and machinery);

"Force Majeure" means circumstances not reasonably within the control of the Company, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or

accident to equipment, mechanical breakdowns, the intervention of federal, provincial, state or local government or from any of their agencies or boards, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise;

"Point of Service" means the point at which the Company's service conductors are connected to the conductors or apparatus of a Customer;

"Power Pool" means the scheme operated by the persons appointed under section 9(1)(b) and (c) of the Act for the dispatch and exchange of electric energy and financial settlement for the exchange of electric energy;

"RRR" means the *Roles, Relationships and Responsibilities Regulation, A.R. 169/2003*, as amended from time to time;

"Retail Service Agreement" means an agreement for the provision of Distribution Access Service pursuant to these Terms and Conditions between the Company and a Retailer, in the form attached as Schedule A hereto;

"Retailer" means a person who sells or provides Electricity Services directly to Customers and who is entitled to enroll Customers for Distribution Access Service under the Company's Terms and Conditions for Distribution Access Service, and includes Default Supplier, the person for whom the Company has made arrangements to provide the Regulated Rate Tariff to eligible Customers, and Self-Retailers;

"Retailer Business Function Identification" means the 2 character identification that describes the Retailer's business function as a regular Retailer or Default Supplier;

"Retailer Identification" means the 9 digit number that uniquely represents each Retailer operating within Alberta. The Canada Customs and Revenue Agency business number will be used as the Retailer ID or as amended in the Settlement System Code;

"Retailer of Record" means the Retailer who is listed in the Company's records through the procedures outlined in these Terms and Conditions, and thereby recognized by the Company and the Settlement System Code (SSC), as a particular Customer's Retailer for a Point of Service at a particular time;

"Self-Retailer" means a person carrying out Retailer functions to obtain electricity services solely for its own use;

"Settlement System Code" means the specifications, standards, methods, calculations and conventions established under section 20(1) of the RRR that govern load settlement in respect of the delivery and exchange of electricity in Alberta;

"Site" means a unique end-use Point of Service, being the finest level at which settlement recognizes retailer assignments, and receives consumption data;

"Site ID" means a unique identification number assigned by the Company for each unique end-use Point of Service;

"System Controller" means the person(s) appointed by the Power Pool Council under section 9(1)(c) of the Act to carry out the system control function of the Power Pool;

"Transmission Administrator" means the person(s) appointed by the Lieutenant Governor in Council under section 21 of the Act;

2.2 Conflicts

(a) If there is any conflict between a provision expressly set out in an Order of the Board and these Terms and Conditions, the Order of the Board shall govern.

(b) If there is any conflict between a provision expressly set out in these Terms and Conditions, as may be amended from time to time, and a Retail Service

Agreement, the express provision of these Terms and Conditions shall govern, as of their effective date.

2.3 Headings

The division of these Terms and Conditions into sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

2.4 Schedules and Appendices

The following schedules and appendices are attached to and form part of these Terms and Conditions:

- Schedule A - Retail Service Agreement
- Schedule B - Disconnect Customer Site
- Schedule C - Non-Discretionary Service Charges

ARTICLE 3 – GENERAL PROVISIONS

3.1 Board Approval

These Terms and Conditions have been approved by the Board. The Company may amend these Terms and Conditions by filing a notice of amendment with the Board. Included in the notice to the Board shall be notification of which Retailers are affected by the amendment and an explanation of how affected Retailers will be notified of the amendments. The amendment will take effect 60 days after such notice is filed, unless the Board otherwise directs.

3.2 Distribution Tariff

The Company's Electric's Distribution Tariff is available for public inspection during normal business hours at the business offices of the Company and at the offices of the Board and can be accessed at ATCO Electric's website at: **www.atcoelectric.com.** These Terms and Conditions form part of the Distribution Tariff and are established pursuant to Section 2 of the Distribution Tariff Regulation.

3.3 Effective Date

These Terms and Conditions come into force on __________. Whenever the Company files notice of an amendment to these Terms and Conditions, or when the Board approves an amendment to these Terms and Conditions, revisions will be issued, with the effective date of the amendments indicated thereon.

3.4 Terms and Conditions Prevail

(a) These Terms and Conditions, as amended from time to time, apply to the Company and to each Retailer. These Terms and Conditions also govern the relationship between the Company and Customer(s) for whom the Retailer is acting as an Agent in its dealings with ATCO Electric.

(b) These Terms and Conditions also apply to any Self-Retailer and to any party appointed as Agent for such Self-Retailer pursuant to an executed Agency Appointment Agreement, as set out in the Customer Choice Guide.

(c) No agreement can provide for the waiver or alteration of any part of these Terms and Conditions unless such agreement is first filed with and approved by the Board.

3.5 Customer Choice Guide

The Company has developed the Customer Choice Guide to help Retailers and Customers understand the normal practices of the Company. The Customer Choice Guide is available on the Company website at www.atcolectric.com. The Customer Choice Guide will be updated, from time to time, to reflect changes to the electric utility industry, or the changing needs of the Retailers or Customers. The Company is committed to follow practices in the Customer Choice Guide. However, as these practices will likely not cover every situation that arises, it may be necessary to deviate from the Customer Choice Guide in certain circumstances.

3.6 Web Site

The Company has developed a secure web site on the internet which contains certain Customer Usage Information which the Retailer can access and use solely for the purpose of providing service to its Customer. The terms and conditions to access the web site are set out in the Customer Choice Guide.

3.7 Ownership of Facilities

(a) The Company remains the owner of all Facilities necessary to provide Distribution Access Service, unless an agreement between the Company and the Retailer or Customer specifically provides otherwise.

(b) Payment made by Retailers or Customers for costs incurred by the Company in installing Facilities does not entitle Retailers or Customers to ownership of any such Facilities, unless an agreement between the Company and the Retailer or Customer specifically provides otherwise.

3.8 New Facilities and Service Additions

The Company reserves the right to communicate directly with the Customer in respect of any requests made by the Customer, or a party acting on its behalf, for the construction of new facilities or additional services as provided for in the *Billing Regulation, A.R. 159/2003*, as may be amended from time to time. The Company reserves the right to charge the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Service Connections. Retailers shall refer to the Company's Customer Guide to New Extensions for details of the requirements with respect to new facilities and service additions.

ARTICLE 4 – GENERAL OBLIGATIONS OF RETAILERS

4.1 Timeliness, Due Diligence and Security Requirements

(a) The Retailer shall exercise due diligence and use reasonable efforts in meeting its obligations hereunder, and perform same in a timely manner.

(b) The Retailer shall adhere to all credit, deposit and security requirements specified in these Terms and Conditions.

(c) The Retailer shall make every effort to ensure that its Customers are aware of the provisions of these Terms and Conditions that may affect the Customer(s).

4.2 Arrangements with Customers

Unless otherwise stated herein, the Retailer shall be solely responsible for having appropriate contractual or other arrangements with Customer(s) necessary to provide service to Customers. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements and shall not be liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the Retailer's failure to perform its obligations to its Customer(s).

4.3 Responsibility for Electric Purchases

The Retailer will be solely responsible for the purchase of electricity from the Power Pool and for arranging the delivery of such electricity to the Point of Service for Customers, subject to these Terms and Conditions.

4.4 Retailer Authorization

The Retailer shall be responsible for obtaining authorization from each Customer authorizing the enrollment of the Customer for receipt of Distribution Access Service by such Retailer.

4.5 Retailer Identification

Any information exchange or communications between the Retailer and the Company under these Terms and Conditions shall employ a Retailer Identification Number.

4.6 Single Retailer for Customer

The Company shall not be required to recognize and deal with more than one Retailer in respect of a Point of Service at any given time. Nothing in these Terms and Conditions shall prohibit a Customer from entering into arrangements with multiple Retailers for a Distribution Point of Service, provided that a single Retailer is designated to be the Customer's Retailer for the purposes of these Terms and Conditions.

4.7 Fees and Other Charges

The Company will provide all standard services hereunder pursuant to the Distribution Tariff. All additional, supplementary or extra non-discretionary services provided by the Company to a Retailer will be charged a separate rate or fee, such as those included, without limitation, in Schedule C. Payment for these services shall be in accordance with the provisions of these Terms and Conditions.

ARTICLE 5 – CUSTOMER INQUIRIES AND CUSTOMER INFORMATION

5.1 Customer Inquiries

For Customers requesting information on Distribution Access Service, the Company will make available the following information:

(a) notification and informational materials to consumers about competition and consumer choices;

(b) direct Customers, on request, to a source where they may obtain the current list of licensed Retailers maintained in accordance with the *Fair Trading Act, RSA 2000, c. F-2("Fair Trading Act")*. The Company is under no obligation to assure the accuracy of this list.

5.2 Customer Inquiries Related to Emergency Situations and Outages

Retailers shall make every effort to ensure Customers contacting the Retailer regarding distribution emergency conditions, outages, safety or environment situations related to the Company's distribution system are referred directly to the Company immediately. The Company reserves the right, without providing notice to the Retailer, to test or audit the response time of the Retailer. The Company will communicate any unacceptable patterns to the Retailer to be corrected.

5.3 Customer Information

5.3.1 Provision of Customer Information to a Retailer

(a) The Company shall provide standard Customer Usage Information to a Retailer that has a Retail Service Agreement in place with the Company upon request and upon receiving consent from the Customer for:

(1) the 12-month period preceding the date of the request, or

(2) for any shorter period for which the Company has collected that information.

(b) A Retailer may request Customer Usage Information prior to an application for enrollment by obtaining and submitting to the Company the authorization from the Customer in a form as set out in the Customer Choice Guide.

(c) The information referred to in part (a) above, with the exception of interval data, will be provided by the Company at no additional cost.

(d) Customers with interval metering will have its Customer Usage Information posted to the Company's secure web site for access. Requests for Customer Usage Information that is above the information posted on the Company's secure web site will be provided by the Company at no additional cost for requests made once per year per account. The Company reserves the right to assess a charge for additional Customer Usage Information requests as set forth in Schedule D hereof.

5.3.2 Provision of Customer Information to the Company

The Retailer must notify the Company as promptly as reasonably practical of any changes to Customer Information, as the Company relies on this information to reasonably perform its wire obligations to Customers. Such information shall be provided in a form acceptable to the Company, as agreed to by the Company and the Retailer. The Company shall not be liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the Retailer's failure to provide up-to-date and accurate Customer Information to the Company.

ARTICLE 6 – PROVISION OF SERVICE

6.1 Qualification for Service

The Retailer must fulfill the following requirements to the satisfaction of the Company before the Company will provide Distribution Access Service to that Retailer:

(a) submit to the Company a fully completed, executed Retail Service Agreement and credit application;

(b) submit to the Company a fully completed, executed Web Site Use Agreement;

(c) (1) for Retailers, with the exception of the person for whom the Company has made arrangements to provide the Regulated Rate Tariff to eligible Customers, providing service to Customers whose annual consumption is below 250,000 kWh, furnish a certified copy of the license issued to it and warrant in writing to the Company that it is licensed pursuant to and will comply with the provisions of the *Fair Trading Act*, and any regulations or policies made thereunder;

(2) for Retailers providing service to Customers whose annual consumption exceeds 250,000 kWh, warrant in writing to the Company that it will comply with the provisions of the *Fair Trading Act*, and any regulations or policies made thereunder;

(d) the Retailer, with the exception of the Regulated Rate Provider, must satisfy the credit requirements of the Company as set forth in Article 11 hereof;

(e) warrant in writing to the Company that it will comply with the guidelines established in the Settlement System Code;

(f) meet the compliance testing protocol of the Company in respect of information exchange, which protocol is set forth in the Customer Choice Guide;

(g) warrant in writing to the Company that it has been qualified by the Power Pool as a participant therein, and can receive electricity from the Power Pool; and

(h) meet any other requirements that the Company, acting reasonably, may impose in order to provide Distribution Access Service hereunder to the Retailer. If the Company determines that a Retailer must satisfy additional requirements in order to qualify for Distribution Access Service, the following process will apply:

(i) where the Company is confronted with a situation which would likely materially alter the risk to the Company, or in order to comply with applicable legislation, the Company may implement the additional requirement and then apply to the Board for approval of same; or,

(ii) where the Company is not confronted with the circumstances outlined in (i), above, the Company shall apply to the Board for approval of the proposed additional requirement prior to implementing same.

Upon satisfaction of the above requirements, the Company will provide Distribution Access Service to the Retailer, subject to these Terms and Conditions set out herein. Subject to complying with all applicable laws, and the directions or requirements of any of the entities mentioned above, the Company reserves the right, upon giving the Retailer ten (10) Business Days notice, acting reasonably, to discontinue Distribution Access Service to the Retailer if at any time the Retailer no longer fulfills the above requirements.

6.2 Application for Enrollment

(a) In order to initiate the provision of Distribution Access Service by the Company, the Retailer shall complete and provide to the Company an enrollment for Distribution Access Service in the form and manner set out in the Customer Choice Guide and in compliance with the Settlement System Code.

(b) The Company will, subject to the Retailer meeting the provisions of these Terms and Conditions, accept an enrollment by a Retailer for provision of Distribution Access Service hereunder. The Company reserves the right to verify the identity of the Customer and the accuracy of the Customer Information. The Company may reject the enrollment if any information required in the application, including the Customer Information and Retailer Business Function Identification, provided by the Retailer is false, incomplete or inaccurate in any respect.

(c) Upon receipt of a valid enrollment from a Retailer in the form and manner set out in the Customer Choice Guide, the Company may accept the enrollment of the Retailer and will recognize the Retailer as the Retailer of Record for that particular Site.

(d) Enrollments will be processed by the Company on a first-come, first-served basis. Each enrollment will be time and date-stamped when received by the Company.

(e) Once the enrollment is submitted, the Company will exercise reasonable efforts, to provide the Retailer, in electronic form, within two (2) Business Days, a status notification informing the Retailer whether the enrollment has been accepted or rejected. If an enrollment is accepted, the effective date of the acceptance and the commencement of Distribution Access Service will be in accordance with the Settlement System Code and will be confirmed in the response to the Retailer. If an enrollment is rejected, the Company will provide reasons for the rejection.

(f) In accordance with Article 12 of these Terms and Conditions, the Company will obtain meter reads from time to time. If the Company does not schedule an actual read at the time of the enrollment, the Company will estimate a meter read. At the request of the Retailer, or with the Retailer's consent, the Company shall obtain an actual off-cycle meter read and assess a charge to the Retailer as set forth in Schedule C hereof.

(g) If more than one enrollment is received for a Site while an earlier enrollment is pending, only the first valid enrollment received by the Company shall be processed in that period.

(h) If the Company determines that the Site (Customer) who has been enrolled with the Retailer is indebted to the Company, the Company reserves the right to disconnect electric service to that Customer as set forth in Article 10 hereof.

(i) The Retailer will not be liable to the Company for any outstanding indebtedness of the Customer to the Company, which accrued prior to the receipt by the Retailer of Distribution Access Service hereunder.

(j) The Company may assess a charge for processing an enrollment as set forth in Schedule C hereof.

ARTICLE 7 – BILLING & PAYMENT

7.1 Retail Billing

The Company will bill the Retailer for Distribution Access Services provided to the Retailer in accordance with the billing procedures set out as follows:

(a) The Company will invoice the Retailer each billing cycle for Distribution Access Service provided by the Company for the period prior to the billing cycle.

(b) The Company will not assume any billing or collection obligations or responsibilities for or on behalf of the Retailer. The Retailer shall process Customer payments and handle collection responsibilities. The Company may, at its sole discretion and in addition to any other remedies available to it, restrict enrollment or terminate Distribution Access Service to the Retailer, if such Retailer does not pay all outstanding bills in accordance with these Terms and Conditions.

(c) The Company reserves the right to bill the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Service Connections. The Retailer shall refer to the Customer Guide to New Extensions or the Terms and Conditions for Distribution Service Connections with respect to these services.

(d) Retailers or any party acting as an Agent on behalf of Retailers are required to provide Customers with notification of a Company distribution rate change in the billing envelope, or through the electronic billing and payment process, that accompanies the first charge to the Customer at the new rate.

7.2 Payment and Collection Terms

(a) The Retailer shall pay to the Company, on or before the 13th Business Day following the Business Day on which the Retailer was invoiced, the amount invoiced by the Company for the preceding period.

(b) The Company will establish an electronic billing and payment procedure for the payment of services hereunder. Notwithstanding, the Company will accept payment by cash or certified cheque if agreed to by the Company.

(c) The Company has established two electronic billing options for Retailers electing to send and receive payments electronically. The Preauthorized Payment Agreement ("Authorization") and the Electronic Payment Transfer Agreement, as set out in the Customer Choice Guide, set forth the terms and conditions for making payments and providing remittance information electronically.

(d) The Retailer shall pay all amounts owed to the Company for any of the Distribution Access Services provided by the Company whether or not the Customer has paid the Retailer.

(e) Failure to receive a bill does not release a Retailer from the obligation to pay the amount owing for any of the Distribution Access Services provided by the Company.

7.3 Late or Unpaid Bills

If a Retailer defaults or is late in paying charges, the Company will provide the Retailer notice as required by section 12 of the *Distribution Tariff Regulation, A.R. 162/2003*, and will be entitled to draw on the credit facility of the Retailer if the Retailer's arrears are not paid within three (3) Business Days after the date of the notice. The Company may require an additional deposit to replace the funds drawn down because of the default or late payment by the Retailer. The Company shall charge interest on the late payment as set forth in Schedule C hereof.

7.4 Adjustment of Bills

7.4.1 Billing Error

Should the Retailer dispute any amount owing, the Retailer shall nonetheless pay such disputed amount and subject the dispute for resolution in accordance with these Terms and Conditions. Following resolution of any such dispute, the Company will return any amount found owing to the Retailer forthwith. Subject to section 9 of the Regulated Default Supply Regulation, A.R. 168/2003, the right or ability of either party to dispute a bill for service provided hereunder shall only apply to bills rendered during a period of two (2) years prior to the date of a written notice of such dispute. The Company may assess a charge to the Retailer for reviewing billing disputes, in circumstances where the Company has not been responsible for any billing error, and a meter test was required, as established in Schedule C, part g, hereof.

7.4.2 Unauthorized Use

Where the Company determines that there has been unauthorized use of electric service including, but not limited to, meter tampering, unauthorized connection or reconnection, theft or fraud whereby the Company is denied full compensation for Distribution Access Services provided, the Company will bill the Retailer for the Company's estimated energy and wires charges of such unauthorized use, including repairs of damage or reconstruction of Company Facilities. Nothing in this section shall limit any other rights or remedies that the Company may have in connection with such unauthorized use.

ARTICLE 8 – DISTRIBUTION ACCESS SERVICE INTERRUPTION

8.1 Continuous Supply

The Company shall make all reasonable efforts to maintain a continuous electricity supply to the Retailer's Customers, but the Company cannot guarantee an uninterrupted electricity supply.

8.2 Interruption

Without liability of any kind to the Company, the Company shall have the right to disconnect or otherwise curtail, interrupt or reduce service to the Retailer (and the Retailer's Customers):

(a) whenever the Company reasonably determines, or when the Company is directed by the System Controller, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's Facilities;

(b) to maintain the safety and reliability of the Company's distribution system; or,

(c) due to any other reason related to dangerous or hazardous circumstances including emergencies, forced outages, potential overloading of the Company's distribution system or Force Majeure.

8.3 Reasonable Efforts

The Company shall use reasonable efforts to minimize any scheduled curtailment, interruption or reduction to the extent reasonably practicable under the circumstances, to provide the Customer with prior notification of any such curtailment, interruption or reduction to the extent reasonably practicable, and to resume Distribution Access Service as promptly as reasonably practicable.

ARTICLE 9 – DISCONTINUANCE OF DISTRIBUTION ACCESS SERVICE

This Article, as amended from time to time, specifies the processes for the transactions between the Company and the Retailer in relation to de-enrollment ("de-select") of a Site, which includes, without limitation, the circumstances when a Retailer chooses not to arrange for Distribution Access Service to the Customer or when the Company discontinues Distribution Access Service to the Retailer as set forth in section 9.2 herein. This section does not cover the provisions under which a Customer requests its service to be salvaged.

9.1 Discontinuance by the Retailer

(a) To discontinue Distribution Access Service, a Retailer shall complete and provide to the Company a notice of de-select in the form and manner set out in the Customer Choice Guide and in compliance with the Settlement System Code. Such notice shall clearly specify the Retailer's reason(s) for seeking to de-select the Site (Customer).

(b) In accordance with Article 12 of these Terms and Conditions, the Company will obtain meter reads from time to time. If the Company does not schedule an actual read at the time of the de-select, the Company will estimate a meter read. At the request of the Retailer or with the Retailer's consent, the Company shall obtain an actual off-cycle meter read and assess a charge to the Retailer as set forth in Schedule C hereof.

(c) The Company reserves the right to verify the identity of the Customer at the Site and the accuracy of the Customer Information upon notice of de-select of a Customer by a Retailer. The Company may reject the notice of de-select if any information required in the application, including the Customer Information, provided by the Retailer is false, incomplete or inaccurate in any respect.

(d) The Retailer is responsible to ensure that its Customers are provided notice of the de-select, and the consequences thereof, and that the Company will not be held liable for any Customer disputes with the Retailer.

(e) Upon receipt of a valid notice of de-select of Distribution Access Service from a Retailer in the form and manner set out in the Customer Choice Guide, the Company will accept the de-select of the Retailer and will process the de-select by the fifteenth (15th) Business Day following receipt of such notice.

(f) The Retailer shall remain responsible for Electricity Services to the Customer Site until a replacement Retailer is appointed and in place for the Customer Site or until that Retailer has requested the Site to be disconnected, whichever is earlier.

9.2 Discontinuance by the Company

The Company may discontinue or restrict Distribution Access Service to the Retailer if any of the following occur:

(a) the Retailer's license has been revoked by Alberta Government Services (this part does not apply to the person for whom the Company has made arrangements to provide the Regulated Rate Tariff to eligible Customers since this Retailer is not required to obtain a Retailer's license), or

(b) the Retailer has failed to meet its obligations under these Terms and Conditions or the Retail Service Agreement with the Company, or

(c) the Retailer has failed to meet its credit requirements pursuant to Article 11.

Notification of discontinuance will be made electronically to the Retailer and by mail to the Customer. The Company will provide the Retailer ten (10) Business Days notice before the Company discontinues Distribution Access Service to the Retailer. Upon discontinuance of Distribution Access Service pursuant to this Article, the provisions of the affected service(s) will be assumed by the Default Supplier for non-eligible

Customers, and the person for whom the Company has made arrangements to provide the Regulated Rate Tariff for eligible Customers.

ARTICLE 10 – SERVICE DISCONNECTS AND RECONNECT

This Article, as amended from time to time, specifies the processes for the transactions between the Company and the Retailer in relation to the physical disconnect of a Point of Service. For the purposes of maintaining consistency with the Settlement System Code, disconnect shall refer to "de-energize" request.

10.1 Disconnection of Service

10.1.1 Disconnection by the Company

(a) The Company has the right to disconnect electric service to the Customer in a number of circumstances, including but not limited to non-payment of the Company bills or any past due charges by the Customer; evidence of safety violations or fraud by the Customer; or the Customer failing to meet its obligations under the Terms and Conditions for Distribution Service Connections or any of the terms of the Customer's Electric Service Agreement. If a Customer notifies the Company to disconnect service, the Company will complete the request and subsequently notify the Customer's Retailer.

(b) If the disconnect is a result of a safety violation, the Company will reconnect the service when the safety problem is resolved and when the Customer has provided, or paid the Company's costs of providing, such devices or equipment as may be necessary to resolve such safety problem and to prevent such damage, interference or disturbance. The Company may assess a reconnect charge to the Retailer as set forth in Schedule D hereof.

10.1.2 Disconnection at Request of Retailer

(a) In accordance with section 105(1)(k)of the EUA, the Retailer shall have the right to request that the Company disconnect service to a particular Customer, and the Company shall comply with that request, unless such action is inconsistent with the Company's approved policies contained in Schedule B to these Terms and Conditions.

(b) If a Retailer requests the Company to disconnect service to a particular Customer for idle service, the Company reserves the right to charge the Retailer the Customer's monthly idle service charges. If the Point of Service is not enrolled with a Retailer, the idle service charges will be charged directly to the Customer.

(c) The Retailer shall provide the Company, Customer, or if applicable, REA, or native areas (reserve or Metis Settlement), with a written notice at least ten (10) Business Days in advance of the proposed disconnect pursuant to clause (a)

(d) The Retailer shall remain responsible for Electricity Services to the Customer until a replacement Retailer has enrolled the Customer at the Site or until the Customer Site is disconnected pursuant to clause (a), whichever is earlier.

(e) The Company reserves the right to assess charges to the Retailer to disconnect service or attempts to disconnect service to a Customer as set forth in Schedule C hereof.

(f) The Company will notify the Retailer if a disconnect request was not successfully completed and include the reason why it was not successfully completed. If the Retailer still requires a disconnect, the Retailer must re-issue a disconnect request the following day.

10.2 Reconnect Service

Before reconnecting or restoring service to a particular Customer:

(a) the Retailer must provide the Company with sufficient notice to reconnect service;

(b) the Company reserves the right to charge the Retailer for each month of disconnection, if the service was previously on idle and is reconnected within 12 months of disconnection, in accordance with the idle service provisions outlined in the Terms and Conditions for Distribution Service Connections;

(c) if the reason for the reconnect request is to resume access service after a Site was disconnected for Customer indebtedness (CONP), and Customer Information on the reconnect request matches Customer Information on the CONP disconnect request, then the Company will not reconnect until such time as a disconnect release is received by the Company from the Retailer that issued the disconnect request. Such release shall be sent to the Company within 24 hours of the Retailer receiving payment;

(d) the Company reserves the right to assess a reconnection charge as set forth in Schedule C hereof.

ARTICLE 11 – PRUDENTIAL REQUIREMENTS

11.1 Setting of Prudential Requirements

(a) The Retailer must fulfill the requirements as set forth in this Article to the satisfaction of the Company before the Company will provide Distribution Access Service to that Retailer.

(b) Subject to review and reassessment of the Prudential Requirements of a Retailer by the Company from time to time, a Retailer shall meet and maintain such financial and other Prudential Requirements as set out in the Distribution Tariff Regulation, A.R. 162/2003 to ensure that the Retailer is and remains of sufficient financial standing to meet its ongoing financial obligations.

(c) The Company, subject to review and reassessment, shall establish the Retailer's security reduction in relation to its credit rating for each Retailer, affiliate or person who guarantees the financial obligations of the Retailer, subject to sections 8 and 9 of the Distribution Tariff Regulation, A.R., 162/2003, and shall notify the Retailer of their security requirement within 20 business days of the Retailer's complete application for service.

(d) For the purposes of calculating the Retailer's payments under the Company's Distribution Tariff pursuant to section 8(2)(b) of Distribution Tariff Regulation, A.R., 162/2003, the total of (i) 20 days, plus (ii) the number of days between consecutive bills issued by the owner to the Retailer, plus (iii) the number of days from the issuance of a bill by an owner until payment is due from the Retailer, shall equal forty-five (45) calendar days.

(e) Subject to section 9 of the Distribution Tariff Regulation, A.R., 162/2003, the Retailer shall provide security in the manner set out in the Customer Choice Guide, in the form of a financial deposit, a bond, an irrevocable letter of credit or an irrevocable guarantee from a person, other than the retailer, with a credit rating.

(f) The Company will confirm the credit rating of the Retailer, affiliate or person which guarantees the financial obligation of the Retailer. The credit rating will mean the bond rating according to Standard and Poor's Bond Rating Service or an equivalent bond rating from Dominion Bond Rating Service or Moody's Investors Service.

If a Retailer has obtained more than one credit rating, the lowest credit rating will be used in the assessment.

11.2 Maintaining Prudential Requirements

(a) If a Retailer's actual outstanding charges under the Company's Distribution Tariff are materially greater than the value projected by the Retailer under section 11.1 of these Terms and Conditions, the Company will update the projection and, if additional security is required based on the updated projection, require the Retailer to provide additional security within five (5) Business Days of the Company's request.

(b) The Company requires Retailers to report any downgrading of their corporate bond rating to the Company within two (2) Business Days of said rating revisions, and must provide any additional security required as a result of the downgrading within five (5) Business Days of the downgrading.

(c) If a Retailer fails to pay any amount billed, subject to section 7.3 of these Terms and Conditions, the Company will apply all or any portion of that Retailer's security deposit to the unpaid amount. The Retailer will then be required to replenish the security deposit as outlined above.

(d) Subject to sections 7.3 and 9.2 of these Terms and Conditions, if the Retailer fails to pay any amount billed or fails to present additional security as outlined herein, the Company reserves the right to suspend the provision of additional Distribution Access Service to the Retailer, or discontinue Distribution Access Service entirely to the Retailer.

Upon discontinuance of Distribution Access Service pursuant to this Article, the provisions of the affected service(s) will be assumed by the Default Supplier for non-eligible Customers, and the person for whom the Company has made arrangements to provide the Regulated Rate Tariff for eligible Customers.

(e) A Retailer that is required to provide security in accordance with these Terms and Conditions must maintain that amount of security until all obligations of the Retailer under the Company's Distribution Tariff are satisfied.

11.3 Confidentiality

All information provided by the Retailer in relation to its financial standing and designated by the Retailer as confidential will be treated as such under the Confidentiality Agreement between the Retailer and the Company. The terms and conditions of the Confidentiality Agreement are set out in the Customer Choice Guide.

11.4 Costs

All costs associated with obtaining financial security and meeting prudential requirements under this section are the responsibility of the Retailer.

11.5 Interest of Security Deposits

Interest on each Retailer's cash security deposit held by the Company will be calculated at the rate specified from time to time in, The Residential Tenancies Act, but not less than 2.5% per annum. Interest will be credited to the Retailer's account annually.

ARTICLE 12 – METERING

12.1 Provision and Ownership

The meters used by the Company to assess the level of Distribution Access Service charges to the Retailer will be the same meters used to provide Customer billing information to the Retailer. The Company will provide, install and seal all meters for each Point of Service of a Customer of the Retailer in accordance with the Company's Terms and Conditions for Distribution Service Connections. Time of use or interval meters shall be installed for a Customer who has a connected load exceeding 500 kW. Each meter shall remain the property of the Company.

12.2 Meter Reading

(a) Billing will be based on meter readings made by the Company from time to time or on estimates for those billing periods when the meter is not read. The Company reserves the right to assess a charge to the Retailer for additional reads above the Company's standard practices as set forth in Schedule D hereof.

(b) For small general service Customers whose load requirements are small, consistent, and can be accurately predicted, the billing demand and energy may be determined, at the sole discretion of the Company, by methods such as but not limited to, the nameplate rating of the Customer's equipment rather than being metered.

12.3 Changes to Metering Equipment

(a) Notwithstanding section 3.8, should a Retailer request or consent to a Customer request for new metering equipment beyond the basic service, the Company shall provide, install, test and maintain the required metering equipment. The metering equipment must be requested or consented to in writing by the Retailer and meet the Company's requirements. The Retailer shall bear the cost of providing and installing the metering equipment, and ongoing operating costs as set forth in Schedule C hereof. For changes to metering equipment on primary distribution voltage levels, the cost of providing, installing, and the ongoing operating costs will be determined on a case by case basis.

The metering equipment shall become the property of the Company and will be maintained by the Company. The Company shall complete installation of the metering equipment within thirty (30) days of delivery from the supplier. The Company shall bill the Retailer upon installation, and the Retailer shall pay the Company in full within thirteen (13) Business Days of receipt thereof. If payment is not received within thirteen (13) Business Days, the Company shall charge interest on the late payment as set forth in Schedule C hereof.

(b) Notwithstanding section 3.8, should a Retailer request or consent to a Customer request to return the metering equipment to its previous basic form, the Retailer shall bear the cost of removal and installation of the metering equipment.

(c) At the request by the Retailer, or with the Retailer's consent, the Company may provide other metering services, above standard metering service, in its discretion, acting reasonably, and may charge separate fees for such service.

12.4 Meter Test and Adjustments

(a) The Company may inspect and test a meter at any reasonable time. At the request of a Retailer, the Company shall arrange for on-site meter verification and if necessary, shall arrange for a meter to be tested by an official designated for that purpose by Measurement Canada or accredited agency as may, from time to time, be designated for this purpose.

(b) If a test determines that the meter is not accurate within the limits set by government standards, the Retailer's bill will be adjusted subject to section 9 of the Regulated Default Supply Regulation, A.R. 168/2003.

Where it is impossible to determine when the error commenced, it shall be deemed to have commenced three (3) months before the test or the date of the meter installation, whichever occurred later. The Company shall not be liable to the Retailer for any additional costs that are associated with such metering or meter reading errors.

(c) The Company reserves the right to assess a charge to the Retailer for a meter test, in circumstances where the Company has not been responsible for any metering error, as set forth in Schedule C hereof. This charge does not apply to circumstances when the meter has been tested to be faulty.

ARTICLE 13 – LOAD SETTLEMENT

13.1 Request for Additional Information

A Retailer may request additional settlement information above the basic service provisions specified in the Settlement System Code or information previously provided by the Company providing:

(a) the Retailer provides a written request to the Company outlining the purpose for the additional settlement information; and

(b) the additional settlement information applies only to the Customers of the Retailer.

Upon satisfaction of the above requirements, the Company will advise the Retailer in a written proposal of the type of work, time of delivery and charges necessary to provide the additional settlement information to the Retailer.

13.2 Liability

The Company shall not be liable to any person for any damages, cost, expense, injury, loss or other liability of any kind whatsoever, or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provision of this article. No express or implied warranties of any kind shall apply to information or services provided by the Company to any person as part of such good faith performance, including without limitation implied warranties of fitness for a particular purpose.

ARTICLE 14 – DEFAULT

14.1 Events of Default

An event of default under these Terms and Conditions and the Retail Service Agreement will occur if either the Company or the Retailer ("Defaulting Party"):

(a) is the subject of a bankruptcy, insolvency or similar proceeding;

(b) makes an assignment for the benefit of its creditors;

(c) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;

(d) fails to pay the other party ("Non-Defaulting Party") when payment is due, or to satisfy any other material obligation under these Terms and Conditions or the Retail Service Agreement including, without limiting the generality of the foregoing, fulfilling the creditworthiness requirements as set forth in Article 11, in accordance with these Terms and Conditions, and fails to remedy the failure or satisfy the obligation, as the case may be, within ten (10) Business Days after receipt of written notice thereof from the Non-Defaulting Party.

14.2 Rights Upon Default

In an event of default, the Non-Defaulting Party shall, subject to these Terms and Conditions and any applicable regulatory requirements, be entitled to pursue any and all available legal and equitable remedies and terminate the Retail Service Agreement without any liability or responsibility whatsoever, except for obligations arising prior to the date of termination. The non-defaulting party shall provide written notice to the defaulting party of its intention to terminate Distribution Access Service hereunder.

ARTICLE 15 – LIABILITY AND INDEMNITY

15.1 Indemnity

(a) Each party (as applicable, the "Indemnitor) will indemnify and hold harmless the other party and its directors, officers, employees, agents and representatives ("Indemnitee(s)") from and against any direct damages, injuries, losses and other liabilities claimed against the Indemnitee or any of them, and all related costs and expenses (including reasonable legal fees) suffered or incurred by any of them in relation to any claims, cause of action, action, suit or proceeding by a third party ("Claim") which arises from damage to property or injury to or death of persons resulting from the Indemnitor's failure to perform its obligations under these Terms and Conditions which failure is caused by the negligence or willful act of the Indemnitor or any of its directors, officers, employees, agents or representatives acting within the scope of their authority or employment. The indemnity under this Section 15.1(a) will be limited to an amount in proportion to the degree to which the Indemnitor or its directors, officers, employees, agents or representatives acting within the scope of their authority or employment are at fault. For the purpose of this Section 15.1(a) "willful act" means any act or omission which is an intentional tort or an intentional breach of any obligations under these Terms and Conditions.

(b) In the event that an Indemnitee is entitled to and desires to assert its right to indemnification from an Indemnitor under this Section 15.1 such Indemnitee will give the Indemnitor prompt notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnitee. The failure to promptly notify the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.

(c) Subject to Section 15.1(d) hereof, if the Indemnitor delivers to the Indemnitee a written acknowledgement of its unconditional and irrevocable obligation to indemnify the Indemnitee under Section 15.1(a) in respect of:

(1) all of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the existence of such obligation to indemnify is made known by the Indemnitor to the third party claimant (and, if applicable, to the court or other tribunal determining the

Claim), the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to the particular Claim and the Indemnitor shall be entitled, at its option, to take carriage of the defense of the Claim by its own counsel and, if it elects to do so, the Indemnitee shall cooperate with the Indemnitor to the fullest reasonable extent in the defense, settlement or compromise of the Claim; or

(2) some, but less than all, of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the Indemnitee is of the opinion that the Indemnitor's interests are not in conflict with its own, the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to that portion of the Claim in respect of which the Indemnitor has an obligation to indemnify the Indemnitee and consult with the Indemnitor in respect thereof.

The Indemnitee shall not make any admission of the liability regarding, or settle or compromise, that portion of the Claim in respect of which the Indemnitor has acknowledged its obligation to indemnify the Indemnitee without the written consent of the Indemnitor, which consent shall not be unreasonably withheld.

(d) The provisions of Section 15.1(a) hereof shall not apply in respect of any Claim to which the Indemnitor is, or may reasonably be expected to be, a party and where the Indemnitee is asserting legal defenses in relation to the Claim that conflict with legal defenses being asserted by the Indemnitor.

(e) Except to the extent to which either party is required to indemnify the other party (and those other persons specified in this Article 15) by the express terms of Article 15, neither party, nor its directors, officers, agents, employees, and representatives, will be liable to the other party for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by the other party, its directors, officers, employees, agents and representatives howsoever and whenever caused, and each party, for itself and as agent for its directors, officers, agents, employees and representatives hereby forever release the other party, its directors, officers, agents, employees and representatives from any liability or obligation in respect thereof. For greater certainty, neither party shall be limited in a claim against the other for specific performance or other equitable relief in relation thereto, or direct damages only and related costs and expenses (including reasonable legal fees), arising from a breach of these Terms and Conditions.

15.2 Consequential Loss

Notwithstanding anything to the contrary contained in these Terms and Conditions, neither party will be liable to the other party, and Company shall not be liable to the Customer with respect to matters for which Retailer is acting as agent for the Customer, for any damage, cost, expense, injury, loss or other liability of an indirect, special or consequential nature suffered by the other party or claimed by any third party against the other party which arises due to such party's failure to perform its obligations under these Terms and Conditions or for any other reason (including negligence on its part or on the part of any person for whose acts it is responsible), howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability or otherwise; and without limiting the generality of the foregoing, damage, injury or loss of an indirect or consequential nature shall include loss of revenue, loss of profits, loss of production, loss of earnings, loss of contract, cost of purchased or replacement capacity and energy, cost of capital and loss of the use of any facilities or property owned, operated, leased or used by the other party.

ARTICLE 16 – FORCE MAJEURE

16.1 Force Majeure Relief

The Company or Retailer, as the case may be, is relieved of its obligations hereunder, and shall not be liable for any failure to perform any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, any event of Force Majeure.

16.2 Exclusions

Notwithstanding the definition of Force Majeure, lack of funds shall not be an event of force majeure.

16.3 Notice

The party claiming relief from liability under the provisions of this Article 16 shall promptly give the other party notice of the force majeure including full particulars thereof and shall promptly give the other party notice when the force majeure event ceases to prevent performance pursuant to these Terms and Conditions.

16.4 Obligation to Remedy

The party claiming relief from liability under the provisions of this Article 16 shall promptly remedy the cause and effect of the force majeure insofar as it is reasonably able to do so.

16.5 Strikes and Lockouts

Notwithstanding any other provision of these Terms and Conditions the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the party claiming relief from liability and such party may settle such strike, lockout or industrial disturbance at such time and on such terms and conditions as it may deem appropriate and no failure or delay in settling such strike, lockout or industrial disturbance shall constitute a cause or event within the control of such party or deprive such party of the benefits of this Article 16.

ARTICLE 17 – DISPUTE RESOLUTION

17.1 Resolution by Company and Retailer

If any dispute between the Company and a Retailer arises at any time in connection with these Terms and Conditions, the Company and the Retailer acting reasonably and in good faith, shall use all reasonable efforts to resolve the dispute as soon as possible in an amicable manner. If the dispute cannot be otherwise resolved pursuant to this Article 17, the chief executive officers of the Company and the Retailer shall meet to attempt to resolve the dispute.

17.2 Resolution by Arbitration

If any dispute has not been resolved pursuant to Section 17.1 hereof within 30 days after notice from the Company or the Retailer to the other of its desire to have the dispute resolved, then the dispute shall be resolved pursuant to Sections 17.3 to 17.11 hereof. The Company and the Retailer shall abide by the terms of any award rendered by the arbitrator(s) appointed hereunder without delay.

17.3 Arbitrators

All disputes or differences between the Company and a Retailer in connection with these Terms and Conditions shall be referred (unless the Company and the Retailer concur in the appointment of a single arbitrator) to a board of arbitrators consisting of one (1) arbitrator to be appointed by each of the Company and the Retailer who shall, by instrument in writing, appoint a third arbitrator immediately after they are themselves appointed. Notwithstanding the foregoing, any disputed matters between the Company and a Retailer relating to an order or direction made or approved by the Board or falling within the exclusive jurisdiction of the Board, shall be referred to the Board for resolution.

17.4 Failure to Concur

The Company and a Retailer shall be deemed to have failed to concur in the appointment of a single arbitrator if such an arbitrator shall not have been appointed within fifteen (15) days after the serving by either the Company or the Retailer on the other of notice requesting it to concur in the appointment of such an arbitrator.

17.5 Refusal to Appoint an Arbitrator

If either the Company or the Retailer shall neglect or refuse to appoint an arbitrator within fifteen (15) days after the other party (provided such other party has appointed its arbitrator) has served the Company or the Retailer, as the case may be, with notice to make the appointment, the party who has appointed its arbitrator shall be entitled to apply, upon notice to the other party, to a Justice of the Court of Queen's Bench of Alberta to appoint an arbitrator for the party in default.

17.6 Failure to Appoint a Third Arbitrator

If the arbitrators appointed by the Company and the Retailer have not, within fifteen (15) days after their appointment or the appointment of the arbitrator last appointed, as the case may be, appointed a third arbitrator, either the Company or the Retailer shall be entitled to apply upon notice to the other party to a Justice of the Court of Queen's Bench of Alberta to appoint such an arbitrator.

17.7 Technical Competence

Any arbitrator appointed under the provisions of this clause whether by concurrence of the Company and the Retailer, by either party, by the arbitrators, or by a Justice of the Court of Queen's Bench of Alberta shall, in the opinion of the persons making such appointment, be possessed of such technical or other qualifications as may be reasonably necessary to enable him to properly adjudicate upon the dispute or difference.

17.8 Compensation of Arbitrators

Each party shall be responsible for the costs of the arbitrator appointed by it hereunder. The costs of the third arbitrator shall be divided evenly between the parties.

17.9 Application of the Arbitration Act (Alberta)

Except as herein modified, the provisions of the *Arbitration Act, S.A., 1991, c. A-43.1*, as amended from time to time, shall apply to any arbitration proceeding.

17.10 Decisions Binding

A decision of the single arbitrator or the majority of the three arbitrators named or appointed shall be final and binding upon each of the parties to the dispute or difference.

17.11 Continuity of Service

All performance required under these Terms and Conditions by the Company and the Retailer and payment therefore shall continue during the dispute resolution proceedings contemplated by this Article 17, provided that in the case of any such proceedings pertaining to amounts payable under these Terms and Conditions, any payments or reimbursements required as a result of the proceedings shall be effective as of a date to be determined in such proceedings and interest shall be paid thereon by the party required to make the payment or reimbursement on the amount thereof at the rate specified from time to time in, The Residential Tenancies Act, but not less than 2.5% from the date so determined until paid.

ARTICLE 18 – MISCELLANEOUS

18.1 Compliance with Applicable Legal Authorities

The Company and the Retailer are subject to, and shall comply with, all existing or future applicable federal, provincial and local laws, all existing or future orders or other actions of the System Controller or of governmental authorities having applicable jurisdiction. The Company will not violate, directly or indirectly, or become a party to a violation of any requirement of the System Controller or any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide Distribution Access Service to the Retailer (or a Customer of the Retailer). The Company's obligation to provide Distribution Access Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of such Distribution Access Service will have been obtained and will be maintained in force during such period of Distribution Access Service.

18.2 No Assignment

Neither the Company nor the Retailer shall assign any of its rights or obligations under these Terms and Conditions or the Retail Service Agreement without obtaining (a) any necessary regulatory approval(s); and (b) the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. No assignment shall relieve the assigning party of any of its obligations under these Terms and Conditions or the Retail Service Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Section shall be void. However, the Company may assign any or all of its rights and obligations under these Terms and Conditions and the Retail Service Agreement, without the Retailer's consent, to any entity succeeding to all or substantially all of the assets of the Company, if the assignee agrees, in writing, to be bound by all of the terms and conditions hereof and if any necessary regulatory approvals are obtained.

18.3 No Waiver

The failure of either party to insist on any one or more instances upon strict performance of any provisions of these Terms and Conditions or a Retail Service Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of these Terms and Conditions or a Retail Service Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the party claimed to have waived or consented to excuse.

18.4 Law

These Terms and Conditions and the Retail Service Agreement between the Company and the Retailer shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. Any lawsuit arising in connection with these Terms and Conditions and the Retail Service Agreement shall be brought in the courts of the Province of Alberta.

ARTICLE 19 – NOTICE

Unless otherwise stated herein, all notices, demands or requests required or permitted under these Terms and Conditions or a Retail Service Agreement shall be in writing and shall be personally delivered or sent by courier-service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

(a) If to the Retailer, to the address and the addressee set out in the Retail Service Agreement between the Retailer and the Company.

(b) If to the Company to: ATCO Electric Ltd.
10035 - 105 Street, Edmonton, Alberta, T5J 2V6
Attention: Executive Vice President, Regulatory

Notice received after the close of the Business Day shall be deemed received on the next Business Day.

ATCO Electric

Page: 45
Effective:
Supersedes: 2003-07-14

SCHEDULE A – RETAIL SERVICE AGREEMENT

MEMORANDUM OF AGREEMENT made the (day) of (month), (year)

BETWEEN: **(RETAILER NAME)**
(address)

(hereinafter called the "Retailer")

- and -

ATCO ELECTRIC LTD., a body corporate with its Head Office in the City of Edmonton in the Province of Alberta ("ATCO Electric" or "Company")

WHEREAS the Retailer has requested the Company to provide the Retailer with Distribution Access Service for the purpose of serving its electricity customer(s) ("the Customer"):

The Retailer and the Company agree as follows:

1. The Retailer is solely responsible for the provision of accurate and timely Customer Information to the Company. The Retailer agrees to provide the following information by electronic form to the Company, and represents and warrants that such information is true and accurate:

   (a) Retailer Identification No.: ________________.

   (b) Customer Information, in a form acceptable to the Company, for each Customer of the Retailer:

Should any of the above Customer Information change during the term of this Retail Service Agreement, the Retailer shall advise the Company of the change, by electronic means, as soon as is reasonably practicable in the circumstance, and in any event within five (5) Business Days of the Retailer becoming aware of the change.

2. This Retail Service Agreement is subject to the ATCO Electric Ltd. – Terms and Conditions for Distribution Access Service ("Terms and Conditions"), as amended from time to time, which are approved by the Alberta Energy and Utilities Board ("EUB").

3. The Retailer shall enter into a Web Site Use Agreement in the form required by the Company prior to obtaining access to any of the Company's Customer information using a secure web site provided by the Company.

4. The Retailer acknowledges that it has been offered a copy of ATCO Electric's Terms and Conditions, has reviewed and understands these Terms and Conditions and agrees to be bound by them, and any amendments thereto, in all transactions with ATCO Electric or its Customers.

5. No person, whether an employee or agent of ATCO Electric or otherwise, can agree to change, alter, vary or waive any provision of the Terms and Conditions without the express approval of the EUB.

6. The Retailer acknowledges that it has been offered a copy of ATCO Electric's Customer Choice Guide and is aware of the policies and business practices of the Company detailed therein.

7. This Retail Service Agreement shall be effective on the date first noted herein, and thereafter shall remain in effect until terminated by either party in accordance with Article 9 or Article 10, as applicable, of the Terms and Conditions; or for the reasons set out in Article 14 of the Terms and Conditions.

8. The Retailer understands and agrees that the Distribution Access Service provided hereunder is provided solely for the Retailer's use at the locations and for the Customers identified to the Company in accordance with paragraph 1 hereof. The Retailer shall not use the Distribution Access Service provided by the Company for any other purpose.

9. If the Retailer, at any time, becomes aware that any Customer is using the service(s) provided by the Retailer or the Company in a manner which is inconsistent with the Terms and Conditions, which could potentially create safety, health or environment concerns or damage the Company's Distribution System or facilities, the Retailer shall immediately notify Company of such circumstances.

10. In providing service to its Customer, the Retailer shall not, in any way, damage or interfere with or otherwise disturb, alter or tamper with the facilities of the Company. The Retailer shall notify the Company immediately of any problem or defect relating to Company's facilities, which is discovered by or brought to the attention of the Retailer.

11. The Retailer agrees to pay all rates, charges, invoices or fees levied or billed to it by the Company in accordance with Article 7 of the Terms and Conditions.

12. The Retailer acknowledges, understands and agrees that the Company will not perform any billing or collection activities on its behalf. The Retailer agrees to pay all amounts due and owing to the Company in accordance with Article 7 of the Terms and Conditions, regardless of any billing or collection disputes the Retailer may have with its Customer(s).

13. (a) The Retailer agrees to comply with the Company's Prudential Requirements established pursuant to Article 11 of the Terms and Conditions and Section 8 and 9of the *Distribution Tariff Regulation, A.R. 162/2003,* for purposes of enabling the Company to assess the Retailer's credit risk and required security.

(b) The Company shall be entitled to access the financial security provided by the Retailer in the event of late payment or default on any invoices or bills of the Company, in accordance with Articles 7 and 14 of the Terms and Conditions.

14. This Retail Service Agreement is subject to all applicable legislation, including the *Electric Utilities Act* and the Regulations made thereunder, and all applicable orders, rulings, regulations and decisions of the EUB or any other regulatory authority having jurisdiction over the Company or the matters addressed herein.

15. This Retail Service Agreement shall enure to the benefit of and be binding and enforceable by the parties hereto and their respective executors, administrators, successors and, where permitted, assigns.

16. If any provision of this Retail Service Agreement, or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Retail Service Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

17. Neither Party may disclose any Confidential Information obtained pursuant to this Retailer Service Agreement to any third Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include all business, financial, and commercial information pertaining to the Parties, Customers of either Party, suppliers for either Party, personnel of either Party, any trade secrets and other information of a similar nature, whether written or otherwise that is marked "proprietary" or "confidential" with the appropriate owner's name.

Notwithstanding the preceding, a receiving Party may disclose Confidential Information to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling or order, providing that:

(a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and

(b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

18. Contacts or Notices required with respect to this Agreement shall be directed as follows:

(a) with respect to the Company's facilities, including technical, safety, health or environment matters:

ATCO Electric Ltd.
10035 - 105 Street Edmonton, Alberta
T5J 2V6

Contact Name: Vice President, Operations
Alternate Contact Name: Senior Manager, Customer Service
Telephone No.: (780) 420-7730 **Alternate:** (780) 420-5596
Telecopier No.: (780) 420-5410 **Alternate:** (780) 420-3111

Retailer Name
(address)

Contact Name:
Alternate Contact name:
Telephone No.: **Alternate:**
Telecopier No.: **Alternate:**

(b) with respect to commercial or business matters:

ATCO Electric Ltd.
10035 - 105 Street Edmonton, Alberta
T5J 2V6

Contact Name: Executive Vice President, Regulatory
Alternate Contact Name: Manager, Industrial Sales
Telephone No.: (780) 420-7076 **Alternate:** (780) 420-3415
Telecopier No.: (780) 420-7222 **Alternate:** (780) 420-7222

Retailer Name
(address)

Contact Name:
Alternate Contact name:
Telephone No.: **Alternate:**
Telecopier No.: **Alternate:**

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day first above mentioned.

[RETAILER NAME]	**ATCO ELECTRIC LTD.**
Per: ______________________	Per: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________

SCHEDULE B – DISCONNECT CUSTOMER SITE

In accordance with subsection 7(2) of the Roles, Relationships and Responsibilities Regulation ("RRR") a Retailer shall have the right to request that the Company disconnect service to a particular Customer, and the Company shall comply with that request. The same policies shall apply to all Retailers. The Company's policy (as approved in these Terms and Conditions) with respect to disconnecting Customers is set out below.

1. Where a Retailer requests the Company to disconnect a Customer for non-payment, the Retailer shall provide to the Company updated Customer Information, the payment amount the Retailer can accept in the event the Customer provides ability of payment, and a direct phone number to the Retailer's collection department for circumstances when the Customer is required to contact the Retailer immediately to resolve payment issues. The Company will not assume any billing or collection obligations or responsibilities for or on behalf of the Retailer.

2. Unless otherwise directed by the Retailer, the Company:
   (a) will schedule a disconnect between 8 AM and Noon;
   (b) in certain remote areas where travel is difficult (e.g. fly-in only, winter roads only), schedule a disconnect between 8 AM and 2 PM;
   (c) will not disconnect on Friday, Saturday, Sunday, a legal holiday, or a day before a legal holiday; and
   (d) in certain remote areas where travel is difficult, will schedule the disconnect on one day of the month.

3. The Company may not disconnect a residential premise between the months of October 15 to April 15, or between April 16 to October 14 when the overnight temperature is forecast to drop below zero (0) degree Celsius within the ATCO Electric service area. During this time a limiter may be installed.

4. The Company will not disconnect a premise if it houses elderly people or contains medical equipment. During this time a limiter may be installed.

5. The Company will not disconnect a premise if the community at large or the occupant is under bereavement. At its discretion, the Company will return within 24 hours.

6. Request to disconnect a Customer located in a REA or native areas (reserve or Metis Settlement) will be reviewed and discussed with the REA Board, Band Council, or Metis Settlement Council before the disconnect is undertaken.

7. The Retailer shall provide the Company, Customer, or if applicable, REA, or native areas (reserve or Metis Settlement), with a written notice at least ten (10) Business Days in advance of the proposed disconnect.

8. The Company will not disconnect if the Customer produces a receipt showing it has paid the most current bill, or amount specified in part 1, of the Retailer.

9. The Retailer shall remain responsible for Electricity Services to the Customer until a replacement Retailer is appointed and in place for the Customer or until that Customer is disconnected, whichever is earlier.

10. The Company will provide to a previous Retailer of Record at the Site the right to request a disconnect for a period of 8 months since it last provided Distribution Access Service at the Site.

11. The Company may upon visiting the Site delay the disconnection until the Company is satisfied that all conditions for disconnection are met. These may include, but are not limited to:
    (a) Customer Information does not match Customer Information provided by the Retailer;
    (b) Customer has payment in hand at the Site and is prepared to meet the payment conditions set by the Retailer.

(c) Immediate danger may exist to the occupants or the Company's representative.

SCHEDULE C – NON-DISCRETIONARY SERVICE CHARGES

1.0 APPLICABILITY

Applicable to every Retailer participating in Distribution Access Service within the Company's service area.

The service charges outlined herein are also outlined in the Company's Terms and Conditions for Distribution Service Connections. This is done to ensure the Customer (or Retailer) is aware of the charges that may apply whether they are reviewing this set of Terms and Conditions or the other. However, the listing of these charges in both sets does not entitle the Company to recovery of these charges under each Terms and Conditions.

2.0 SCHEDULE OF CHARGES

All charges and provisions of the Customer's applicable price schedule shall apply in addition to the following charges for the service being provided.

(a) CONNECTION FEE (for residential Customers)

(1) Connection of electric service to any premises during the Company's regular business hours:

$10.00

(2) Connection of electric service to any premises after the Company's regular business hours, if requested by the Customer:

$ Company's actual costs
($10.00 minimum)

(b) CONNECTION FEE (for non residential Customers)

(1) Connection of electric service to any premises to new Customers connecting to the existing service location during the Company's regular business hours:

$10.00

(2) Connection of electric service to any premises to new Customers connecting to the existing service location after the Company's regular business hours, if requested by the Customer:

$ Company's actual costs
($10.00 minimum)

(c) SWITCHING FEE

Customer voluntary switch of Retailer:

$10.00 per Site

(d) RECONNECTION AND DISCONNECTION OF SERVICE

(1) Reconnection of electric service to any premises during the Company's normal business hours:

$45.00

(2) Reconnection of electric service to any premises after the Company's normal business hours, if requested by the Retailer (or Customer):

$ Company's actual costs
($45.00 minimum)

(3) Disconnection of electric service to any premises after the Company's normal business hours, if requested by the Retailer (or Customer):

$ Company's actual costs
($45.00 minimum)

(4) Failed attempts to disconnect electric service to any premises during or after the Company's normal business hours:

$ Company's actual costs
($45.00 minimum)

(e) REQUEST FOR INTERVAL METER

Customer request for interval metering at secondary distribution voltages for connected load under 500 kW:

Cost of Material and Installation plus
$70.00 per month per meter for ongoing operating and maintenance costs

(f) SUPPLEMENTARY METER READS [1]

(1) Conventional meter reads (AMR):

$6.00 per read per meter

(2) Conventional meter reads (non AMR):

(i) Meter read to any premises during the Company's normal business hours:

$45.00 per read per meter

(ii) Meter read to any premises after the Company's normal business hours:

$ Company's actual costs
($45.00 minimum)

(g) METER DISPUTES

Review of meter disputes, which includes a meter test, in circumstances where the Company has not been responsible for any error:

Self Contained Metering	*$50.00 per evaluation*
Instrument Transformer Metering	*$200.00 per evaluation*

(h) CUSTOMER USAGE INFORMATION [2]

Interval meter usage data above what is posted on the Company's web site:

Monthly meter usage data	*$200.00 per request per meter*
Hi Low Usage Report by day	*$120.00 per request per meter*

(i) LATE PAYMENT CHARGE

1% per month (12.68% per annum)

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[1] **Standard Company Meter Reads:**

Interval meters	Daily
Conventional meters (AMR and non AMR type)	Residential and Non Residential - Monthly or Bi-monthly Company Farm and REA - Once per year

[2] **Standard Usage Request**

Interval meters	12 months of 15 minute interval data once per year per meter
Conventional meters	12 months of data once per year per meter